

**REPORT FROM  
THE SELECT COMMITTEE ON  
THE COMMITTEE WORK OF THE HOUSE**

**VOLUME II—EVIDENCE**

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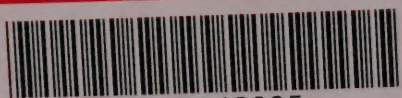
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TABLE OF CONTENTS  
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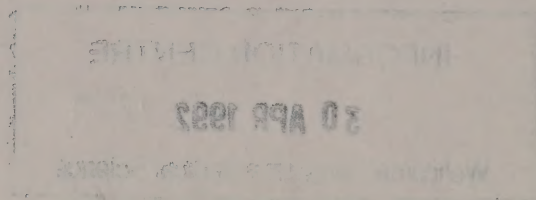
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# TABLE OF CONTENTS

## VOLUME II — EVIDENCE

Page

### ORAL EVIDENCE

#### *Mr M A J Wheeler-Booth and Mr P D G Hayter*

Written Evidence .....	1
Oral Evidence, 18 June 1991 .....	8

#### *Rt Hon Baroness Serota*

Written Evidence .....	20
Oral Evidence, 24 June 1991 .....	38

#### *Lord Flowers, FRS and Dr R H Walters*

Written Evidence .....	59
Oral Evidence, 1 July 1991 .....	72

#### *Sir Peter Emery, MP*

Oral Evidence, 16 July 1991 .....	87
-----------------------------------	----

#### *Mr Terence Higgins, MP*

Oral Evidence, 16 July 1991 .....	95
-----------------------------------	----

#### *Rt Hon Lord Waddington QC*

Written Evidence .....	103
Oral Evidence, 23 July 1991 .....	106
Further Written Evidence .....	132
Oral Evidence, 12 November 1991 .....	146

#### *Rt Hon T Garel-Jones, MP, and Mr M Arthur, Foreign and Commonwealth Office*

Oral Evidence, 18 October 1991 .....	120
--------------------------------------	-----

#### *Rt Hon Kenneth Clarke, QC, MP*

Oral Evidence, 12 November 1991 .....	139
---------------------------------------	-----

#### *Rt Hon Lord Cledwyn of Penrhos, CH*

Oral Evidence, 18 November 1991 .....	154
---------------------------------------	-----

#### *Rt Hon Lord Rippon of Hexham, QC*

Oral Evidence, 18 November 1991 .....	161
---------------------------------------	-----

#### *Rt Hon Lord Shepherd*

Written Evidence .....	164
Oral Evidence, 18 November 1991 .....	165

#### *Rt Hon Viscount Whitelaw, KT, CH, MC, DL*

Written Evidence .....	170
Oral Evidence, 27 November 1991 .....	171

#### *Rt Hon Lord Aberdare, KCB*

Written Evidence .....	176
Oral Evidence, 27 November 1991 .....	177

#### *Lord Henderson of Brompton, KCB*

Written Evidence .....	182
Oral Evidence, 27 November 1991 .....	183

#### *Sir Christopher Prout, QC, MEP, and Mr Richard Corbett*

Oral Evidence, 16 December 1991 .....	189
---------------------------------------	-----



## WRITTEN EVIDENCE

Page

## Clerk of the Parliaments:

Select Committees on Public Legislation .....	201
Select Committee on Environmental Impact Assessment .....	204
Select Committee on Delegated Legislation and on the Constitutional Implications of Bills .....	205
Miscellaneous matters arising from oral evidence .....	207
Gentleman Usher of the Black Rod .....	209
Librarian, House of Lords .....	210
Supervisor of Parliamentary Broadcasting .....	210

Advisory Council on Science and Technology .....	211
Professor Tom Blundell, Agriculture and Food Research Council .....	212
Association of County Councils .....	212
Association of Metropolitan Authorities .....	213
Mr Vernon Bogdanor, Fellow of Brasenose College, Oxford .....	216
British Bankers' Association .....	220
Secretary-General of the Commission of the European Communities .....	221
Confederation of British Industry .....	221
Secretary-General of the Council of the European Communities .....	223
Consumers in the European Community Group .....	223
Mrs Eileen Denza, Second Counsel to the Chairman of Committees .....	225
Mr Andrew Duff .....	227
English Nature .....	230
Sir John Fairclough .....	230
Professor J P Grant, University of Glasgow .....	231
Mr Nigel Haigh, Institute for European Environmental Policy .....	232
Professor Malcolm Harrington, University of Birmingham .....	233
Mr Peter Hill, BBC Parliamentary Correspondent .....	234
Sir John Hill, FRS .....	235
HMSO .....	235
Institute of Personnel Management .....	237
Law Commission .....	237
Law Society .....	238
Mr Anthony Lester, QC .....	239
Professor Juliet Lodge, University of Hull .....	239
Medical Research Council .....	243
Professor Philip Norton, University of Hull .....	243
Lord Ross of Newport .....	250
Sir Michael Atiyah, KT, FRS, Royal Society .....	250
Mr Michael Rush, University of Exeter .....	250
Science and Engineering Research Council .....	252
Professor Keith Pavitt, Science Policy Research Unit, University of Sussex .....	253
Scottish Law Commission .....	253
Mr Donald Shell, University of Bristol .....	254
Mr Adrian Slade, Archbishop of Canterbury's Acting Secretary for Public Affairs .....	256
Mr David Lea, OBE, Trades Union Congress .....	257
Lord Underhill, CBE .....	257
Dr Helen Wallace, Royal Institute of International Affairs .....	258
Mr Andrew Warren, Association for the Conservation of Energy .....	258
Professor Roger Williams, University of Manchester .....	259

## Correspondence with the Secretary of State for Education and Science:

Letter from Lord Flowers, Chairman of the Science and Technology Committee .....	261
Letter from the Rt Hon Lord Shackleton, KG, FRS .....	262
Letter from the Private Secretary to the Secretary of State for Education and Science to the Clerk .....	262



# MINUTES OF EVIDENCE

TAKEN BEFORE THE SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE

TUESDAY 18 JUNE 1991

Present:

Bancroft, L	Kearton, L
Beaverbrook, L	Pym, L
Boston of Faversham, L	Thurlow, L
Dormand of Easington, L	Tordoff, L
Jellicoe, E (Chairman)	

## Memorandum by the Clerk of the Parliaments

### INTRODUCTION

1. This paper is in two parts. Part I outlines the history of committee work in the House of Lords since the last years of the nineteenth century. The aim is to show how the present committee system of the House has arisen. This part of the paper is intended to be purely historical and to present the facts as objectively as possible. The Committee may already be aware of some of the information, but I believe it is desirable to have it formally on record for possible use as evidence in the Committee's final report. The second part of the paper, entitled "Conclusions", is intended to raise questions which the Committee may wish to consider, without seeking to suggest the answers.

## PART I: THE HISTORY OF COMMITTEE WORK IN THE HOUSE OF LORDS

### HOUSE OF LORDS COMMITTEES BEFORE 1970

2. The House has for many years made regular use of committees to deal with domestic and procedural matters. But committees on bills and on general subjects had a rather erratic history before the early 1970s. Some use was made of standing committees on bills between 1889 and 1910. Select committees on public bills were established quite regularly in the early years of this century (mainly before the First World War) but there was none between the Second World War and the late 1960s<sup>1</sup>. There is a similar pattern with select committees on general matters. Eleven such committees were set up between 1901 and 1914. They considered subjects such as betting, juvenile smoking, the Church in Wales and the declaration of the Sovereign against transubstantiation. There were a further nine such committees between the wars, considering matters such as road safety, the design of Lambeth Bridge and the damage to agriculture caused by rabbits. There was also a joint committee on India. But there were no such general committees in the Lords between 1940 and 1971, although there was one joint committee, set up in 1966, on censorship of the theatre.

3. In the late 1960s, the use of Lords' Committees again became an issue. On 29 April 1965 the House debated a motion by Lord Alport on reform of the House. In the debate Lord Alport and others urged the use of standing committees on bills<sup>2</sup>. These would not take evidence, but would take the committee stage of bills off the floor of the House. In 1966, the Procedure Committee considered the case for standing committees on public bills but rejected it because of practical difficulties in selecting members. The committee did however support the use of select committees on suitable bills<sup>3</sup>. On 22 May 1968 the House debated a motion in the name of the Leader, Lord Shackleton, concerned with the pressures on time available for legislation in the House and measures to alleviate the problem. Several speakers supported the idea that a bill might have its committee stage off the floor of the House as an experiment, although others had reservations. On the whole the proposals were given a general but guarded welcome<sup>4</sup>. The first bill to be so committed was the Gaming Bill<sup>5</sup>. The Committee was held to be a success: the 1st Report of the Procedure Committee said so and recommended further use of such committees<sup>6</sup>. The commitment of the Development of Tourism Bill in the 1968-69 session was not however regarded as being such a success, although in 1971 the Highways and Civil Aviation Bills were both successfully committed to public bill committees. But no bill was committed to a public bill committee between 1975-76 and 1986-87.

<sup>1</sup>There were a few joint select committees of both Houses on bills during this period.

<sup>2</sup>HL Debs Vol 265 cols 719-816.

<sup>3</sup>2nd Report of the Procedure Committee, session 1966-67, item 4.

<sup>4</sup>HL Debs Vol 292 cols 699ff.

<sup>5</sup>HL Debs Vol 293 col 756, 26 June 1968.

<sup>6</sup>1st Report, session 1968-69, 30 April 1969.



18 June 1991]

[Continued

4. The Government's White Paper on Reform of the House of Lords, published in 1968, supported the use of public bill committees. It also argued "there may be scope for involving the Lords in specialist or select committees . . ." and suggested the Arts and Law Reform as possible subjects<sup>1</sup>.

5. It seems that the use of public bill committees in the Lords was a consequence of the pressure for reform in the late 1960s; and that the revival of discussions about general select committees at that time had a similar origin.

#### GENERAL COMMITTEES AND COMMITTEES ON BILLS SINCE 1970

6. Since 1970, there has been a revival in the use of committees to consider general policy areas, or to take evidence on the subject matter of bills. This initiative too arose out of the movement for House of Lords reform in the late 1960s, but subsequent developments have owed more to the pressures of the day than to any overt policy. There has been a tendency—with some notable exceptions—to concentrate on non-party political issues.

7. Session 1971–72 saw the establishment of a general policy committee and a select committee on a bill. In both cases, these procedures had not been used since 1938–39. The Committee on Sport and Leisure was first proposed in the House by Lord Jellicoe, as Leader of the House, in the debate on the Address in reply to the Queen's Speech in November 1971. Lord Jellicoe was conscious that the committee would represent a break from recent practice, but described increased select committee activity as "a spar which could be rescued from the wreckage" of the 1968 White Paper on Lords Reform. Lord Shackleton later described the initiative as a "striking breakthrough, or breakback"<sup>2</sup>. Similarly, when moving the motion to commit the Anti-Discrimination (No 2) Bill to a select committee, Lord Jellicoe again quoted from the 1968 White Paper in explaining the revival of the procedure. He said that the bill was "ideally suited" to the procedure, since it was "of perhaps little . . . party-political controversy, but certainly it is one which touches subjects of very great social complexity". He also argued that the technical complexity of the bill was an important factor in the decision to propose a select committee. Another argument put forward in debate was that since the bill had already been rejected in the Commons, detailed select committee scrutiny might be required to persuade the Commons to change their minds<sup>3</sup>. The Anti-Discrimination Committee reported in April 1973, the Sport and Leisure Committee in July that year.

8. Neither procedure became common as a result, and there has never been a policy decision that the House should always have one such committee extant. However, for most of the years since 1971 there has been one *ad hoc* select committee. This has come to supplement the work of the European Communities Committee and the Science and Technology Committee. It has also been accepted in practice that only one such committee has been set up at any one time: one argument often used against proliferation has been that of staff. The full list of select committees on general matters and bills since 1970 is as follows:

- 1971–73 Sport and Leisure
- 1976–77 Commodity Prices
- 1979–82 Unemployment
- 1984–85 Overseas Trade
- 1988–89 Murder and Life Imprisonment

The following select committees have been established to look at bills since 1970:

- 1972–73 Anti-Discrimination (No 2) Bill
- 1975–76 Hare Coursing Bill
- 1977–78 Bill of Rights Bill<sup>4</sup>
- 1978 Foreign Boycotts Bill
- 1979–80 Laboratory Animals Bill
- 1983 Parochial Charities (Neighbourhood Trusts) Bill and Small Charities Bill
- 1987–88 Infant Life (Preservation) Bill

None of the bills chosen for such committees was on a clear party political issue, and all but Hare Coursing were private members' bills. On occasions, bills have been introduced with the intention of facilitating the establishment of a committee to look at a particular subject.

9. Many suggestions have been made over the years since 1971 for select committees; in the majority of cases these have fallen on stony ground. Earlier this year, for example, Lord Campbell of Alloway proposed a select committee to look into compensation for medical injury<sup>5</sup>. The suggestions which have succeeded have

<sup>1</sup>Cmnd. 3799 Appendix 2, paras 3 and 10.

<sup>2</sup>HL Debs 2 November 1971 cols 23–24, 9 December 1971 col 895.

<sup>3</sup>HL Debs 18 April 1972 cols 8–17.

<sup>4</sup>This bill was not reintroduced in the 1977–78 session, but the committee continued as a subject committee.

<sup>5</sup>HL Debs 585, 20 February 1991.



18 June 1991]

[Continued]

been those which have built up a head of steam, and have found favour with the usual channels. The Unemployment Committee was proposed on several occasions, notably by Lord Kilmarnock, before being set up. Lord Windlesham argued for a committee on Murder and Life Imprisonment on the third reading of the 1987 Criminal Justice Bill, with the experience of the previous stages fresh in the minds of the House<sup>1</sup>.

10. In addition to these types of committees, two further categories should be mentioned. First, *ad hoc* select committees and working groups have been set up to look at various procedural and domestic issues, such as European Instruments (1972–73); Televising the Proceedings of the House (1984–85); the Group on the Working of the House (1987); Joint Committees in the early 1970s on Delegated Legislation and on Sound Broadcasting, and (in 1986–88) on Private Bill Procedure. Second, the use of public bill committees in the late 1960s and early 1970s was the subject of a further experiment in 1986–87 (the Pilotage Bill). Members of the Pilotage Bill committee were evenly divided on the success or otherwise of the experiment. The Group on the Working of the House argued that the experiment had been unsuccessful, although it added that the choice of the Pilotage Bill had been misconceived, and the timing of the committee unfortunate. A difficulty which bedevils the choice of bills for this procedure is that if they are contentious, they are thought to be unsuitable, while if they are not, little time is saved on the floor of the House.

#### THE EUROPEAN COMMUNITIES COMMITTEE

11. When the United Kingdom entered the European Economic Community on 1 January 1973 there had already been discussion of the need for parliamentary scrutiny of EEC legislation. In December 1972, both Houses had appointed select committees to consider how to set up such scrutiny. The Lords Committee, under the Chairmanship of Lord Maybray-King, reported in March and July 1973. Its second and main report recommended that the House should set up a sessional select committee with wide terms of reference, including the power to consider the merits of proposals for legislation (a power not recommended by the Commons Committee) and the power to appoint sub-committees and co-opt members. The Lords Committee recommended more wide-ranging powers than the Commons Committee because members would have more time to take evidence and produce considered reports, and because membership of the European Community was more generally accepted in the Lords<sup>2</sup>. Many members of the House of Commons were also unwilling to see the main work of scrutiny removed from the floor of the House.

12. The Maybray-King Committee proposed the following terms of reference for the European Communities Committee:

“To consider Community proposals, whether in draft or otherwise, to obtain all necessary information about them, and to make reports on those which, in the opinion of the committee, raise important questions of policy or principle and on other questions to which the committee consider that the special attention of the House should be drawn.”.

13. During the debate on the Maybray-King report on 6 December 1973, the Leader of the House suggested that the Procedure Committee should consider some of the matters raised by the report in the light of debates in both Houses. The Procedure Committee did so in January 1974 and considered, among other matters, whether the European Communities Committee should have more limited terms of reference than proposed by Maybray-King. As the Procedure Committee's subsequent report makes clear, the Government would have preferred the new Committee to have narrower terms of reference and less extensive powers. The Procedure Committee decided in favour of Maybray-King's proposed terms of reference adding the caveat that “a committee with these terms of reference should not interpret them too widely and should adopt a selective approach to its work”<sup>3</sup>. The minutes of the Procedure Committee show that the Committee believed that there was a need for the new European Committee to have wide terms of reference in order to satisfy public opinion and to allow scrutiny similar to that carried out by other European Parliaments. The Procedure Committee did not accept arguments that a wide-ranging European Committee could impede the Government, or that it would be overwhelmed by its workload.

14. The European Communities Committee has been re-appointed at the beginning of each session since 1974. The Committee has the power to appoint sub-committees and to co-opt members. These powers give it great procedural flexibility. Its work is essentially pre-legislative. But the work of the Committee and its sub-committees has changed over the years. The Committee now produces fewer reports than in its first few years but the reports tend to be longer and more substantive. The number of papers circulated to members is increasing. To begin with, seven sub-committees were appointed, though this was reduced to six in 1986–87. Since 1979, *ad hoc* sub-committees have become a regular feature, with an average of one every year. The staffing of the Committee currently consists of five Clerks (over a quarter of the total number of Clerks) and two legal advisers. A specialist assistant was appointed in 1988.

<sup>1</sup>HL Debs 967–68, 1 December 1987.

<sup>2</sup>House of Commons Procedure Committee Report (Paper 588–II, session 1977–78 pp. 193–4).

<sup>3</sup>1st Report from the Procedure Committee, 30 January 1974.



18 June 1991]

[Continued

## THE PRACTICE AND PROCEDURE COMMITTEE

15. When the Labour Government came to power in 1974, it did not take steps to revive the work of the late 1960s on House of Lords Reform. However, the Queen's Speech in November 1975 promised that "proposals will be put forward for a major review of the practice and procedure of Parliament". The Government subsequently proposed that each House should establish a committee to examine its practice and procedure. This approach was endorsed in a debate the following March<sup>1</sup>.

16. From the first, it was clear that the House's committee system would be a key element in this review. In the March 1976 debate, the Leader of the House, Lord Shepherd, argued that the experience of the European Communities Committee had shown "that our committee system is capable of useful development. . . this leads me to wonder whether there is scope for the appointment of specialist committees in this House to cover the activities of certain Government departments". Several speakers, including Lord Shepherd, were also keen to explore the use of joint committees: Lord Shinwell had suggested the establishment of a joint committee on defence in February 1976. Throughout the next few years, progress in the Committee and implementation of its recommendations was delayed by a feeling that the Lords had to keep in line with decisions being made in the Commons. Indeed the motion to establish the Committee was not moved until July 1976, in order to avoid pre-empting the Commons' committee.

17. The Committee's main recommendations on the work of committees were made in its 1st Report, 1976-77<sup>2</sup>. The Committee proposed establishing a new structure for the House's committees. Its motives were twofold. First, it sought to reduce legislative congestion on the floor of the House. Such congestion had been particularly acute towards the end of the 1975-76 session. The hope was that a new committee system could ease this congestion, and give more time in the House for other debates. Second, it hoped to improve the quality of the House's scrutiny of bills. The European Communities Committee was seen as a model; the report aimed to apply "to domestic legislation. . . the existing procedures of the House for scrutinising European instruments".

18. The Committee proposed the establishment of seven or eight committees, each consisting of twelve peers. Each committee would be responsible for a particular policy area, and could consider all bills, delegated legislation, white papers and green papers within their remit. On Commons bills, the committees' job would be threefold. When the bill was in the Commons, the relevant committee would take evidence from interested parties. It would also monitor proceedings, with a view to drawing notable points to the House's attention (eg Government undertakings). When the bill arrived in the Lords, the committee would sit as a public bill committee for the bill's committee stage. For Lords bills, the committee would sit for its scrutiny function and its public bill committee function after the second reading.

19. The report was debated in the House in July 1977, and although reservations were expressed, several speakers supported an experiment for the following session. Indeed, Lord Windlesham had tabled an amendment committing the House to such an experiment, but was persuaded not to move it after assurances from the Leader, Lord Peart.

20. This experiment never took place. Just before the summer recess in 1977 the Procedure Committee met, but the differences of opinion were such that it was decided to establish a Sub-Committee to look into the experiment. Differences included whether bills alone should be considered by the committee, whether they should be referred only by a decision of the House, and whether evidence should indeed be taken whilst the bill was in the Commons. The Sub-Committee reported in February 1978, proposing a committee which would consider only bills referred to it by the House, and would take only written evidence until the relevant bill reached the Lords. The Procedure Committee considered the Sub-Committee's report in July 1978, expressing further doubts and delaying any decision on the experiment until after proposals from the Commons Procedure Committee. This in turn delayed further consideration until the autumn of 1979, by which time there had been a change of Government.

21. At this point the proposals were overtaken by the establishment of other committees, unconnected with the Practice and Procedure Committee's report. The Committee itself had floated the idea of a Foreign Affairs Committee in its 2nd Report, 1976-77<sup>3</sup>, but this was not acted upon. First, a Select Committee was appointed to investigate Lord Halsbury's Laboratory Animals Protection Bill. Second, the *ad hoc* Select Committee on Unemployment was set up. Finally, the Procedure Committee endorsed the suggestion that a Select Committee on Science and Technology should be established (see below). None of these committees could be seen as being experiments on the lines of the Practice and Procedure Committee's proposals, since none was a standing committee with power to take evidence or with a remit to consider legislation in a particular field. But they did provide a practical argument—pressure on resources—for dropping the proposed experiment which avoided having to make a clear decision on the Committee's report. When the Laboratory Animals Bill Committee and the Unemployment Committee had completed their work, there was no attempt to revive proposals for an experiment.

<sup>1</sup> HL Debs 11 March 1976, cols 1413-1460.

<sup>2</sup> LJ 624, HL 141.

<sup>3</sup> LJ 761.



18 June 1991]

[Continued

22. The reports of the Practice and Procedure Committee remain the only attempt to give the House's committee system a guiding philosophy and coherent structure. The fact that the Committee's reports were not implemented can be explained by the misgivings of many in the House and the Government, and by unfortunate timing: the attempt to work in parallel with the Commons had interrupted the momentum behind the Committee's work. Nevertheless, one positive result was that (whether by accident or design) by the early 1980s, the House's subject-related committee work was concentrated on two main areas—the European Community and Science and Technology—not covered fully by the Commons departmental select committees. This has remained the position ever since.

#### THE SCIENCE AND TECHNOLOGY COMMITTEE

23. The Science and Technology Committee was established in January 1980. For several years, there had been a House of Commons Committee on science and technology. But such "subject" committees were discontinued when the full departmental select committee structure was established in 1979. Although the Government maintained that parliamentary scrutiny of science could be accommodated within the House of Commons select committee structure, this position received some criticism in the Press and in scientific circles. Encouraged by the support of the Parliamentary and Scientific Committee, Lord Shackleton and Lord Sherfield proposed to the Procedure Committee that the Lords should set up its own Science and Technology Committee. They argued that the House had a large pool of Members with particular scientific expertise, which could be exploited in such a committee.

24. The Procedure Committee endorsed this proposal in November 1979<sup>1</sup>. Its report was agreed by the House the following month. On appointment, the Committee was given power to appoint sub-committees; to co-opt Lords; and to appoint specialist advisers. The only restriction on the size of the Committee was the Procedure Committee's recommendation that only one Clerk be appointed to run the Committee and its Sub-Committees. The Committee decided to establish two Sub-Committees to conduct enquiries, and a "general purposes" Sub-Committee. This pattern has been maintained ever since. The staffing currently consists of two Clerks and a specialist assistant.

25. One recurring suggestion has been the possibility of a joint committee on science and technology. In particular, this proposal was mooted by the House of Commons Committee on Procedure last year<sup>2</sup>. Outside observers have commented that "The Commons committees seem to have made no obvious effort to liaise with their . . . Lords counterparts . . . , which seems a pity given that the two sets of committees could probably complement one another by tackling similar subjects from different vantage points . . ."<sup>3</sup>.

## PART II CONCLUSIONS

#### GENERAL PRINCIPLES OF COMMITTEE WORK

26. The history of committee work in the Lords suggests that since 1970 the House has on occasion been ready to set up committees when it saw a need. But decisions have almost always been *ad hoc* and there has been no systematic reform such as the Commons' two major reviews. Only two subject-based committees have been permanently established but these now consume a large proportion of the Committee energies of the House. There is little if any common pattern to explain why some proposals to set up *ad hoc* committees have succeeded when others have not. There may be a case for considering whether the present system for setting up committees is sufficient and satisfactory, or whether some more formal mechanism is needed.

27. The House of Commons has a Liaison Committee, composed mainly of Committee Chairmen. It oversees expenditure on foreign travel; helps to avoid simultaneous enquiries by different committees on the same subject; and "brings together the collective experience of select committees" (Erskine May p. 658). The Committee may wish to consider whether such a committee would be of value in this House; and, if it would, its possible membership and powers. It could be limited to co-ordinating the establishment of *ad hoc* committees; or it could also oversee the committees on the European Communities and on Science and Technology. The Committee may also wish to examine whether the choice of subjects for the House's committee work has really reflected the House's wishes; or whether its choice has been restricted by external factors, such as events in the Commons or the wishes of the Government.

28. A number of other broad policy questions arise from a study of the past history of committee work in this House. First, the House has avoided duplicating the committee work of the House of Commons. Does the Committee believe that such an approach is in principle right? Secondly, there has been some limited use of joint committees of both Houses. For practical reasons they have not been very successful, and powers to meet jointly (such as those available to the European Communities Committee) are rarely used. The House

<sup>1</sup> 2nd Report, 1979–80 (LJ 366: HL 97).

<sup>2</sup> House of Commons Select Committee on Procedure, 2nd Report, 1989–90: The Working of the Select Committee System (HC 19), paras 279–285.

<sup>3</sup> The New Select Committees, ed Drewry (2nd Edition, 1989), p 352.

*18 June 1991]**[Continued]*

of Commons Procedure Committee has pressed for a Joint Committee on Science and Technology, but the fundamental differences in character between the two Houses have meant that such suggestions for joint committees have not been pursued. Thirdly, can the value and cost-effectiveness of the House's committee work be measured? If so, does the House provide value for money in comparison with the work conducted by bodies such as Royal Commissions, which themselves fell into disfavour under Mrs Thatcher's administration?

#### THE EXISTING COMMITTEE WORK OF THE HOUSE: RESOURCES

29. As well as considering the policy of committees, the Committee may wish to scrutinise the work of the House's existing select committees, notably those on the European Communities and on Science and Technology. The key issues here are the balance of effort between the work of these two committees; between their work and that of the House's other committees; and between committee work and other work of the House. In the words of a recent academic survey of the select committees of the two Houses<sup>1</sup> one could examine "whether it is beneficial for Parliament as a whole that the Commons devotes relatively little of its resources to the scrutiny of Community and international affairs as opposed to domestic affairs, whereas in the Lords the balance is, even more markedly, the other way". Is the House making the best and most effective use of the resources available for committee work, namely peers' time and staff?

30. There is no doubt that committee work is time-consuming for those members of the House who serve on committees. The European Communities Committee has estimated that its work occupies over 3000 "peer hours" per annum. Those members who have the experience and inclination for committee work may find themselves in demand not only by the European Communities and Science and Technology Committees but also by the needs of Private Bill Committees. There is a limit to how much committee work the House can conduct.

31. The staff of the House too are limited in how much they can do. It has recently become clear that we are unable to serve any more committees because of the lack of clerks: as a result the proposal for a committee on sustainable development was not put into effect. In addition the Staff of the House Sub-Committee has been made aware of the pressures which face the staff of some existing committees.

32. This paper does not go into questions of staffing in great detail. The Committee may wish to concentrate on the policy questions of committee work. But it seems in principle wrong for the absence of staff resources to curtail the work the House wishes to undertake. Once the House has clearly established its priorities for committee work questions of staffing will be addressed.

33. For practical and financial reasons, it might not be desirable to give an unconditional guarantee that any demand the House might have for new committees could always be met by the employment of new staff. At present there are 19 Clerks in the Parliament Office (including one temporary clerk). Eight work in the Committee Office, five on the European Communities Committee. There are only three clerks working directly on public legislation. In addition, the employment of more Clerks is not necessarily the right way to make more staff available for committee work—and it creates problems in the career structure of the Parliament Office. Consideration could be given to the employment of more specialist assistants, following the experimental appointments made in 1988. Specialist assistants could be employed with sufficiently general expertise to be of wide use to the House. A specialist assistant qualified in economics, or in European Community affairs, would be an obvious choice.

#### THE RELATIONSHIP BETWEEN COMMITTEES AND THE HOUSE

34. The European Communities and Science and Technology Committees have considered their own working methods from time to time and a number of internal changes of substance or emphasis have resulted. The European Communities Committee has recently completed a review of its work which will be available as evidence. But there has been no external review of their work. Peers not involved in the Committees have had little opportunity to assess their success beyond reading their reports and listening to debates. It may therefore be useful to consider the time devoted to debates on committee reports; the extent to which such debates attract interest beyond those who serve on committees; and whether the Government should be invited to increase the frequency of written responses to committee reports.

#### THE EUROPEAN COMMUNITIES COMMITTEE

35. The European Communities Committee has come a long way since its establishment in 1974 and now produces about 30 reports a year, many of which are very wide-ranging and substantial. A great deal of detailed scrutiny work is also carried out. The Committee could ask which aspects of the European Communities Committee's work the House itself—and the outside world—finds of most value. Is the Committee's work being most effectively directed? or should it concentrate on subjects where it can have a major impact and where a reaction from the Government will be ensured? Should it cease to report proposals

<sup>1</sup> Drewry, *op cit* p. 52.



18 June 1991]

[Continued

for information and only make reports which will be debated and thus receive a Government reply? There may also be a case for the Committee to cease making reports on matters previously reported upon; and for some debates on committee reports to be on motions to approve rather than take note, thus allowing the House to take a view.

36. There is also a fundamental uncertainty about the role of the European Communities Committee. An examination of its reports reveals that sometimes it scrutinises the impact of EC proposals on the United Kingdom; sometimes it tries to assess the desirability of proposals from a Community perspective; and sometimes it conducts enquiries into domestic matters in the United Kingdom, using Community proposals as a “peg” for the enquiry. The Committee may wish to examine whether all three are legitimate objectives for the European Communities Committee. Furthermore, the three types of enquiry require different use of resources—for example the second needs input from across the Community, the third primarily from the United Kingdom. This may create a tension in the work of the committee and dissipate its resources. There may be a case for restating its objectives more specifically, if necessary by altering its terms of reference.

37. Scrutiny of the structure of the European Communities Committee will follow naturally from an examination of its role. Its present structure is six working sub-committees—each with specified subject areas—and a select committee which must formally approve the reports prepared by the sub-committees. The Committee could ask whether there is a role which the Select Committee itself can usefully fulfil; whether the present system of sub-committees is sufficiently flexible; and whether it has adjusted to changes in the nature of Community proposals. There may be a case for concentrating resources in a smaller number of committees, perhaps including at least one *ad hoc* committee not tied to any specific subject area.

#### THE SCIENCE AND TECHNOLOGY COMMITTEE

38. In considering the work of the Science and Technology Committee, questions could be asked about how subjects for enquiry are chosen, and whether the subjects chosen are of value both to the House and to the wider scientific community. The committee's enquiries are often very extensive, but it has on occasion produced reports more quickly on subjects of topical importance.

39. There may be a case for the Science and Technology Committee to consider more fully the scope of enquiries before they begin, perhaps on the basis of a formal paper from the Chairman. The Committee could ask whether there is a need to specify more clearly the Science and Technology Committee's terms of reference or whether its virtually unlimited freedom to choose subjects is—and will continue to be—a healthy freedom. In particular, is there a sufficient fund of suitable subjects available for enquiry or will the committee's work necessarily become repetitive? The Committee could also scrutinise the scientific advice available to the Science and Technology Committee and could ask whether it is able to attain in its reports the kind of technical competence which is both intelligible to members and the public, and of sufficient quality to have an impact on public policy.

#### A NEW DIRECTION IN COMMITTEE WORK?

40. Finally, the Committee may wish to examine a number of suggestions for a new direction for the committee work of the House. Lord Northfield has raised in the House the case for committees on legislation to be used again (see paragraphs 6–10 above). There are a number of forms such committees could take, in addition to select committees on individual bills. One possibility would be a committee on the form of legislation and whether it is overburdening the courts. Another would be a committee to examine the extent to which legislation involves constitutional issues, or excessive use of delegated powers. A third would be a standing committee to assess the environmental impact of all public legislation. A fourth would be a committee to examine draft legislation for compatibility with the European Convention on Human Rights; or to scrutinise the work of the Law Officers' Departments. The Committee may well have other proposals in mind. It must be stressed that should the House decide on any move towards such new committees, this would have to be accompanied by the provision of sufficient resources, perhaps by reducing the workload of existing select committees. But, with that proviso, there is a case for considering the establishment, as an experiment, of one expert committee to hear evidence on a particular piece or class of legislation. Such a committee would need to fit in with the legislative time-table.

#### GENERAL CONCLUSION

41. It is clear that the present committee system of the House has grown up in a rather random way. There has been little if any overall direction of developments by the House. A division has appeared between the work of the House's committees and the House itself. Much of the House's resources is now devoted to the work of select committees, in particular for scrutiny of European legislation. This is most true of the Clerks. The Committee may wish to take a considered overview of the direction that the committee work of the House should take in the coming years. It could consider the case for giving more attention to scrutiny of domestic legislation. Once the House has considered the Committee's conclusions, it would be for the Staff of the House Sub-Committee to consider how best to tailor resources to meet the wishes of the House.

12 June 1991



18 June 1991]

[Continued

## Examination of witnesses

MR M A J WHEELER-BOOTH, Clerk of the Parliaments, and MR P D G HAYTER, Reading Clerk, called in and examined.

## Chairman

1. I should like first of all to apologise for my voice which I have left somewhere in the South Pacific. I hope it will have returned by our next meeting. Secondly I would like very much to welcome the Clerk of the Parliaments and the Reading Clerk. I think it is particularly appropriate that they should be giving evidence to us at the start of our inquiry, given the fact that one, Michael Wheeler-Booth, is the founding father, as it were, of the European Communities Committee, and the other, Paul Hayter, is the founding father, as it were, of the Select Committee on Science and Technology. Welcome. I would like to thank Mr Wheeler-Booth for his admirable paper with its very interesting historical introduction. I personally found it very helpful indeed. Before you make any introductory remarks, could I just mention that we have had a number of replies to our questionnaire to Peers, though there are quite a few still to come in. Some are mildly critical of the way we handle things but I think at the moment the general consensus would be perhaps broadly in favour of the *status quo* throughout some with certain suggestions. I would be very glad to know generally whether the Clerk of the Parliaments is content with the *status quo* or not. I suggest we might have a general discussion after you have made your introductory remarks and before we turn to the specifics. I would therefore confine myself to welcoming you here and asking if you would introduce your paper to us.

(Mr Wheeler-Booth) Thank you, my Lord Chairman, for your welcome. I applaud the fact that this enquiry has been set up. I think there is scope for change and I think it is extremely welcome that the House of Lords has decided to set it up, in effect, to step back and appraise the committee work of the House, which is such an important part of its contribution to Parliament. The House of Commons set up their departmental committees after a major two-year enquiry and they have had at least two fairly full-scale enquiries since, and they have only been going just over a decade. The only inquiry of this kind in the Lords was the Practice and Procedure Committee, of course, and its recommendations were stillborn for political reasons, which you as an ex-Leader of the House will understand much better than I. I am sorry that there was a rather long historical section in the paper, which perhaps is a bit tedious, but I did think it was important to lay before the Committee the way in which committees have grown up. To call it a "committee system", I think, is a mistake. They have grown up like Topsy, without a plan, in reaction to specific problems and, in one case at least, as a sort of alibi for inaction in respect of another proposal. I think that the workload of this House, both on the floor of the House and in committee, has grown enormously and I think that this is another reason why this review is timely. The IPU, whose assemblies I attend as a member of the Association of Secretaries General, recently

circulated a questionnaire on workload in other parliaments, and the astonishing fact emerged that the House of Lords sits longer hours than any other parliamentary assembly within the IPU with the one exception of the House of Commons. I am not sure that this is something to be proud of. I wonder incidentally if this Committee has given any thought to considering the way other parliaments organise their committee affairs; whether you have any thought of visiting the European Parliament, or sending a small delegation to do so; and whether you have any thought of finding out how other Commonwealth parliaments organise their affairs. My impression is that most of them use committees to lessen the workload on the floor of the House. On this point about workload, as you know, we spent over 1,000 hours sitting last session: over 60 per cent of that was on legislation and about half of that 60 per cent was in committee of the whole House—7½ hours, roughly speaking, per day, and just under one third of that in committee of the whole House. Coming back more strictly to committee work, I think that, as the paper makes clear, the number of *ad hoc* enquiries set up by the House has been very limited. My submission to your Committee, my Lord Chairman, would be that the contribution they have made has been very high and it seems to me that one of the problems is that it is very difficult to set up such *ad hoc* enquiries at the moment. At a time when the Government of the day has not favoured Royal Commissions and when the Think Tank has been abolished, it does seem to me that *ad hoc* committees are a cheap way of getting objective views on major problems. A further worry and a further reason for welcoming your enquiry, is that there is a rather disquieting divergence between the work on the floor of the House and the work in committee. I see that the lines of questioning which I have been shown refer to that. There is a final point I would like to make: I stopped being clerk to the European Communities Committee in 1983 and rather consciously, as a vicar who leaves a parish, I decided to try and have nothing to do with it—not to interfere, not to think about it. That is the reason why I have brought Mr Paul Hayter along, who has been Principal Clerk of Committees over these years until becoming Reading Clerk in January, and I hope that he, with his more recent experience and much more up-to-date knowledge, will be able to answer all the questions you floor me with. I do not know if he would like to add anything?

(Mr Hayter) Can I in addition to welcoming this inquiry add three very brief comments? The first is that I am convinced of the value of committees. I think that they bring in the expertise of Members of the House in a valuable way, including some of those who might not participate if our business were confined to the floor of the House. Secondly, I would want the House to continue what it is doing now in its committee activity, but I would argue in favour of changing the centre of gravity. I think the present balance of



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued

[Chairman *Contd*]

activity in fact is wrong, and I would argue in favour of doing other things as well as the work in Europe and Science and Technology, and redistributing the effort of the many peers and staff who are involved. Thirdly, I have in fact been Clerk of Committees, or I was until Christmas, for 13 years—initially the office did not include Europe although latterly it did—and during that period I was for a while Clerk of the European Communities Committee and for a rather longer time, Clerk of the Science and Technology Committee. One thing of which I became acutely aware during that period was the great difficulties experienced by any Member of the House who wanted to put forward a proposal for an *ad hoc* committee; not difficulties caused by any unwillingness on the part of anybody to set up *ad hoc* committees, more a lack of any machinery to get the question discussed in a serious way.

2. I would like at a later stage in our discussion this afternoon to come back on that particular point. I would like to thank the two Clerks for what they have said to introduce this subject. I would also like to say that I think there is no one around this table who in any way questions the very high reputation of the two existing Committees of which we have been speaking, their dedication and expertise, but I hear what you say about a slight imbalance at the present time, and I have one question to ask on that. I heard what Mr Wheeler-Booth said about the possibility of other *ad hoc* committees. If it were possible to find room for some of the untapped expertise in this House on some of the other areas where the House can bring very considerable experience and knowledge to bear—be it in general environmental matters or the countryside or the arts, or be it the matter of sustainable development where there is pressure understandably for select committee treatment (I have seen there is also pressure to look at the question of no fault compensation for medical accidents)—is it your feeling that those matters should be on *ad hoc* committee lines rather than by setting up another more general Select Committee, if it were possible to have it?

(Mr Wheeler-Booth) Yes, broadly, my Lord Chairman, I agree with that. I think there should be a liaison committee set up which would have on it some such membership as Leader of the House or his representative, Leader of the Opposition or his representative, Liberal Democratic Leader or representative, Chairman of Committees, Chairman of the European Committee, Chairman of the Science and Technology Committee and say one or two others, perhaps back benchers. It would meet from time to time as required to act as a kind of umpire to consider proposals for *ad hoc* enquiries, on the basis of a paper in each case which would set forth the scope and method of proceeding of the enquiry, drafted after consultation with government departments, outside specialist advisers or potential advisers, trying to tell the committee, “ You could usefully advance the argument in this and this area but honestly you cannot do much about that for such and such a reason ”. It would be served probably by the Principal Clerk of Committees and only meet as

occasion demanded. I am aware at the moment that *ad hoc* enquiries are often still born, because the people who are not too keen to see them set up play the ball into touch by referring them to me and what they say is, “ Have you got the staff to do that? ”, and the truth of the matter is at the moment our staff is very stretched and I say, “ Please do not set up an *ad hoc* enquiry ”. However, it is quite wrong, fundamentally wrong, that if the House wants such an enquiry one should not make the effort to find the staff and the accommodation and solve the other real problems which would have to be faced to do it. I think you need a sort of umpire body.

3. There is no existing body which can fulfil that function or have it grafted on to it?

(Mr Wheeler-Booth) There are informal meetings of Leaders and Whips, of which you are aware, my Lord Chairman, as an ex-Leader, which meet very infrequently and do not have the infrastructure or any provision for setting the whole thing up; nor do they have back benchers by definition.

Lord Pym

4. On the basis of the Committee work as it now exists, that is to say leaving aside the potential for saving legislative time on the floor, how would Mr Wheeler-Booth define the function of a committee? It seems to me to provide an analysis and comment upon a particular subject with the aim of bringing the issues surrounding that subject to the attention of Parliament and the public; I think that applies to the European Committee, the Science and Technology Committee and the *ad hoc* committees. It seems to me that has been done extremely well, rather in contrast to the systematic method now adopted by the Commons, but I wonder very much how you would define that role. Secondly, leaving aside for the moment the question of resources, which is obviously critical in practice, have you a view about the broad limit of committee work, not from the point of view of resources but from the point of view of the workload on Members and their desire for a committee and the need for such a committee; and within that limit what are the factors that need to be taken into account which bear on the choice of subject?

(Mr Wheeler-Booth) On the first question, I very much agree with what Lord Pym has said, I think that one of the special qualities of Lords' inquiries is their capacity for objective analysis, for asking the right questions which need to be asked. I think they are better at that than at solving the problems, but I think that is almost inevitable and a number of *ad hoc* inquiries have raised to the public platform of debate subjects which really needed to be addressed. Of course one of the factors, so to speak, or one of the legs on which the strength of the process is based, is the taking of evidence, because they are able to get the best people involved to give their views and have their views down and printed and available, like for example the evidence given on the possible Bill of Rights which advanced the problem extremely well and is used, I am told by my friends in the Common Rooms of Oxford, as a text book. They use the



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Lord Pym *Contd*]

evidence in the report as a way of teaching their under-graduates. I think it is a great pity that this is applied at the moment to only very limited areas of what you might call the public domain—in those areas very extensively and exhaustively, but it has hardly been applied at all to other large areas.

5. So there is a lot more scope. It could be extended from that point of view?

(*Mr Wheeler-Booth*) I think there is more scope in the subject matter. You asked about the manpower, so to speak, of the House, and that is highly finite. I think it not unfair to say that the profuse peerage creation policy of Mr Wilson, as he was, Mr Heath, and Mr Callaghan, as he was, was rather diminished under the last Prime Minister and, of course, that does pose a problem; but there have been a number of new peerages announced. I think it is a reason for selectivity, in a word. The House cannot, so to speak, just do more and more, they have to cut down in certain areas if they are going to take up new areas, because there is a limited number of Lords available to do the work.

(*Mr Hayter*) I think there is one relevant point here in the choice of areas on which to concentrate. It is easier to get an expert Member of the House to serve on an *ad hoc* committee because he or she knows that the commitment is finite. It is more difficult to get someone to serve on a standing committee because this could amount to a five-year sentence.

*Lord Dormand of Easington*

6. I am a bit concerned to hear the Clerks say we are talking about finite resources. I would have thought, if the House wants to do, and feels there is, something which ought to be investigated, then resources should be increased. We are talking in broad terms about staff and rooms and what-not. The thing that puzzles me about this—I am a new Member after four years here—is who decides this. Mr Wheeler-Booth has made a suggestion here on what is something like, not quite the same as but parallel to, the Commons the Liaison Committee. It would not be quite the same. Incidentally, I noticed you did not mention the cross-benchers being represented. Was that deliberate?

(*Mr Wheeler-Booth*) That was an oversight.

7. There are 500 cross-benchers. I do not see why they should not be represented.

(*Mr Wheeler-Booth*) I beg your pardon, that was a total oversight.

8. That might be an appropriate body. It is a new idea to me. I will come back on some other points later, Lord Chairman, but I wonder if we could have some more comments from our two Clerks today about why we think there is a finite resource in an area where, if the House so chooses, appropriate committees ought to be appointed? My final point is that as the years go by, there should surely be changes?

(*Mr Wheeler-Booth*) I am afraid I did not make myself clear. I was saying there is a finite amount of peer time and brains. I meant there are a certain

number of Members, many of whom have to work elsewhere, some of whom are not so active, and so on. It was not a reference to the staff or accommodation. I was trying to answer Lord Pym's point and was referring to the Members of the House who are willing and suited to undertake this work. Many people cannot, they have jobs or farm in the country or whatever. In a sense, why should they?

*Lord Thurlow*

9. Could I ask the Clerk of the Parliaments for clarification on one point you mentioned in your general remarks? You referred to divergence between the floor of the House and the committees. Could you just amplify that?

(*Mr Wheeler-Booth*) It is an impression, my Lord Chairman. When you have debates on committee reports, there is a tendency for those who speak to have been members of the committee and then there is a frontbencher from each side, the Minister and two frontbenchers, and the number of people with specialist knowledge who take part is usually very limited. There is just a slight element of cosiness—almost, you might say, a repeat of the committee's report—and I think some of the debates are perhaps longer than they need be because the essence of the debate surely would be that the committee's report is before the House. You assume they have read it anyway, and their chairman introduces it. You have to get the Government reply, you want the other front bench comments, you want comments of other experts in the subject or, indeed, not experts but plain men who may say, "I think, whatever your arguments for EMU, I do not want to have the same money". But to go on at length with, say, six members of the committee or sometimes even more, saying what has been put in the report strikes me as a possible waste of time and, indeed, there was a debate, indeed an excellent debate, on the Science and Technology Report just before the recess, but an awful lot of members of the enquiry spoke and unfortunately it did not prove possible to get many of those with specialist knowledge who were off the committee to take part. But I think there is one further point that needs to be said: that is that a debate is a way of getting a Government response, and I would urge strongly that it is a mistake to produce a report and not get a Government response. I would for that reason question the case for too many reports for the information of the House. After all, the committee should not have trouble in arranging debates because, unlike in the Commons, there is no such thing here as "Government time". Standing Order 38 has recently been revised to allow select committee reports to have the same precedence as public bills on Mondays, Tuesdays and Thursdays. If you do not have reports debated when you want them, it is because you do not demand it effectively enough from the usual channels. Given the fact that in this House we have never been subjected to the kind of changes of procedure that the Irish members caused in the Commons in the late nineteenth century, there is absolutely no reason for that.



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

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[Lord Thurlow *Contd*]

10. The issue of general participation in general debates on reports does raise the question of the timing of debates, which you have just referred to. On the Science and Technology debate, for instance, that was, I think, the second item on the agenda on a Friday.

(*Mr Wheeler-Booth*) I thought it was a Thursday.

11. A Thursday just before a recess, and so I think this is a practical consideration of importance, the time of debates.

(*Mr Wheeler-Booth*) But the timing of debates is done by negotiation and in the time I was serving in the European Committee we sometimes had them debated on a Wednesday and asked that the Secretary of State concerned reply, which was graciously accorded, and it was a very good debate. After all, we got up yesterday at about half past four and we got up on Friday at half past one, at lunchtime—so you cannot say there is no time. I think it is a non-problem; or that it should be a non-problem.

Lord Tordoff] First of all, Lord Chairman, I apologise to the Committee and the Clerk of the Parliaments for being late for this meeting. I had just come from apologising to their Lordships in the House below for having to leave them on a matter on which I should be engaged, which illustrates the point that the Clerk of the Parliaments made about a certain shortage of manpower in staffing committees of all sorts. Just to take up the point he has been raising, it has often occurred to me that, if only those people who have taken part in the drafting of a report then speak in the debate, and if the Government merely then says “We have noted with interest what the committee says and will give the Government response in due course”, then the debate does become frankly a little fatuous. Perhaps we ought to have a mechanism for coming back to these reports at a later stage when the Government has actually made its position clear. I wonder if you have any thoughts on the mechanism for achieving this. The usual channels are not necessarily the best people to decide the merits or otherwise of having a debate on a particular select committee report, because very often they are not aware of the importance of it. Chairmen of Select Committees and of sub-committees naturally want to have their subject debated on the floor of the House. Is there some possibility of setting up a filter process similar to the one Mr Wheeler-Booth has suggested for deciding on *ad hoc* committees?

Lord Kearton

12. Before Mr Wheeler-Booth answers, I have a very similar point to Lord Tordoff in a way. I took part in the recent science debate and I was a member too of the Committees. If you look at Hansard you will see in the first part of the debate the reports were thoroughly covered by my colleagues and they extracted the most important points and principles arising from the reports. In my own contribution, I took the reports as read, and I tried to widen the debate, I made various remarks and asked a number of questions. To no avail. What happens is that the

Minister reads beautifully, really beautifully, a statement prepared by civil servants on precisely the points brought out in the report, and in no sense was she briefed to do anything else. In other words, taking your point about broadening the debate, the Minister is only briefed to answer the report and not anything which arises from it at all and that seems to be a fundamental disappointment and weakness, if I may say so, of the whole way in which we work. Many people on these committees feel at the end of the day they work very hard but they might as well be talking to themselves.

(*Mr Wheeler-Booth*) I have great sympathy with the two points which have been raised. I think one remedy is a certain flexibility in arranging debates. Personally I am surprised to hear that the Government makes a habit of saying they are going to reply later, as the debate is normally at least a month after the report has been produced, at least, and there should be complaint if it is much longer. If they have had a month to think about it, they ought to be able to say something fairly meaty.

13. As I remember it, when I was on the Science and Technology Committee, it took anything up to a year for Government departments to reply on some of the reports.

(*Mr Hayter*) I think the value of the debate is to get the view of Members of the House, it is not to get a response from the Government. The practice of the Science and Technology Committee and *ad hoc* committees in the past has been to ask for and receive a response in writing. The European Communities Committee now is in the odd position that they sometimes get a response in writing, probably on the least important reports, the ones which are not debated, but they get a reply in the debate on the more important ones. I suspect on the whole the replies they get in writing are more valuable to them than the replies in the debate. Indeed, I would go so far as to say, given the job which the European Communities Committee does, it would be an error to insist on having all reports debated because there are some subjects which call for scrutiny and which frankly do not call for debate, and there is therefore an advantage in not cluttering up the Order Paper with debates on minor subjects, or alternatively feeling you cannot report on the subject because it is going to force you to have a debate on it.

Lord Beaverbrook

14. Lord Kearton's point is a very important one, but I think it is not just a problem with debates on reports from Select Committees. I hazard a guess that even on that system a similar problem would probably take place because Ministers, certainly in this House, are not authorised to make answers up whilst they are on their feet, and it is probably just as well in most cases that they are not, if I may say so. However, it is a fact of life which applies to virtually all proceedings in this Chamber.

(*Mr Wheeler-Booth*) I apologise, I did not reply to Lord Kearton's point, and as Lord Beaverbrook has just said, it is a fact of life that ministerial replies are limited when you have only 21 Ministers, many of



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Lord Beaverbrook *Contd*]

whom are not based in the department they are speaking for and are having to speak from a brief. That is one of the disadvantages. Of course it contrasts with what goes on in Committee where you have a direct confrontation between the people who know about it, so to speak, on both sides. In the House you have two puppet figures, so to speak, controlled by strings, or carrier pigeons if you prefer, who talk to each other and they send messages back to base. In the Committee rooms you had, in my day in Europe, Lord Ashby presiding over the Environment Sub-Committee, and the civil servants and scientists coming to give evidence before him in considerable terror saying, "He knows more about it than we do" and all I could say was, "He is a very nice man, he will not be beastly", but it is a quite different kettle of fish and it does allow a direct interlocking of minds in a way that debate sometimes has great difficulty in permitting.

Lord Kearton

15. My Lord Chairman, I think what Mr Wheeler-Booth is saying is that committee dialogue is more instructive, more informative and more productive in many ways than debates on the floor of the House, and as a member of various committees I have found this has been so. I would like to go back to the beginning when you mentioned that this Government had done away with Think Tanks and Royal Commissions. I used to act as an adviser to the very first of the Think Tanks in Lord Rothschild's day, and I have been very much concerned in my time with Think Tanks like Chatham House and the others on Economic Affairs. My impression is that the best of the House of Lords' reports stand in very favourable comparison with what any of the Think Tanks do in this country and elsewhere. I have had considerable experience of Think Tanks in America and I think House of Lords' reports, at their best, are some of the most thoughtful and constructive analyses and discussions of problems you can get, and I think what we ought to address ourselves to is how we can get more. As you say in your text, sometimes we use a directive or something else as a peg on which to hang a general enquiry. I have the feeling that general enquiries are not always welcome to committee purists but they bring out some of the most important information. If you have *ad hoc* select committees in the House of Lords as national think tanks, they can be very important indeed.

(Mr Wheeler-Booth) I agree.

Lord Bancroft

16. Could I ask a general question of the Clerk of the Parliaments? I think you were extremely kind, if I may say so, in referring to anodyne creatures like Topsy in describing the system of committees which we have here. It is, as the first 25 paragraphs show, a most remarkable series of coincidences and accidents and "happenstances" which have led to our present arrangements. What I would like to ask, following up Lord Kearton's question and Lord Pym's question, is how does one envisage the essential purpose of the committee work of the House of Lords? At the

moment we have the two big blocks of Europe and Science and Technology and the occasional very important piece of *ad hoc* committee work. We have had no Royal Commissions until very recently. Sir Douglas Wass in some Reith Lectures some years ago suggested what one needed was some sort of Standing Royal Commission to investigate matters which were really too difficult to be investigated by any other means, to which I replied, "You have got it in the shape of the House of Lords, full of experts both in terms of clerks and in terms of peers." Is it not the case that really one ought to look at the work of the committees of this House as something which is analytical and illuminating and which, whether or not it is responded to by Government on a particular issue, at any rate moves things forward in the national interest?

(Mr Wheeler-Booth) Again—I am beginning to sound rather like a parrot—I agree. I think it is fair to say that about the history. There is one *caveat* which I must make, which is that at the beginning when the select committees were first started again after a very long interval by our Lord Chairman as the then Leader of the House, it was, as he said in moving the Motion, "saving something from the shipwreck of the abortive House of Lords reform" where those concerned on all sides of the Inter-Party Conference believed that select committee work was potentially of value to Parliament and to the public. So I think one has to make that one *caveat* to this general picture of accident. On the more general point, again I am afraid I agree very much with the drift of your question. It is one of the reasons I welcome this enquiry, because I hope it may lead to a structure being set up that makes it easier to establish such committees, both on difficult problems *ad hoc* and conceivably on some of the other possibilities raised in the penultimate paragraph of my paper. Whether a standing, so to speak, Royal Commission is right I would question for this reason: that if you are having an enquiry on the Bill of Rights you want to have, Lord Scarman, for example, and that sort of person on it, and if you are having an inquiry into the north-south divide do you want to have Lord Greenhill or that sort of person.

Lord Bancroft] I very much agree.

Lord Boston of Faversham

17. Could I just come back to one specific question which I do not think we have had evidence on about the timing of debates on reports from the committees? Could I ask the Clerk of the Parliaments and the Reading Clerk whether it is their impression that it is the general case that the timing of debates on those reports is poor and that it is for that reason that Members of the House who are not members of those committees find it impossible or difficult to take part and, therefore, we have the, however valuable, perhaps somewhat incestuous nature of the debate which takes place?

(Mr Wheeler-Booth) Well, there are a lot of complaints to that effect and, given the extremely good-tempered tenor of this House about the management of its business and in general, the



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Lord Boston of Faversham *Contd*]

thought arises “no smoke without fire”. I think though, my Lord Chairman, that in a sense the remedy is in the hands of the committees and the members of the committees because, as I said, there is no “Government time”, you can say you are going to have something debated and, if you insist, you do. There is no priority for Ministers in this House, nor for frontbench Opposition. Any Member of the House can put down a motion any day, as they can put down a question any day. You have dinner hours when the House just packs up because the people concerned need to have some dinner. You could have a short debate then, the House used to do that. There is a lot to be said for short debates of an hour or an hour and a quarter. So if it is a problem, it is susceptible to reasonably easy solution. It is easier in a session like this when the legislative decks are clear for understandable reasons than during last session. But I do not think it would be beyond the wit of man to arrange debates reasonably quickly, especially if they were not too long, because the House wants to hear those who have not served on the committee.

*Lord Pym*

18. Lord Chairman, would it not be an advantage if it became a practice for the Government to reply in writing to all reports within a limited period of time and then a debate, if there is to be a debate and it is decided to have a debate, would take place in the light of the report and reply? Would that not be more advantageous?

(*Mr Wheeler-Booth*) I think it would be very advantageous but you have to get Governments to agree and as an ex-Leader of the House of Commons you understand better than I would that there are constraints about civil service time.

(*Mr Hayter*) There are, if I may say so, occasions when select committees themselves have said that for one reason or another they would be in favour of the Government's delaying its reply until the reply is likely to be more considered. There was a particular example recently with Priorities in Medical Research which was a Science and Technology Committee Report. The report came out during the whole reorganisation of the NHS; it would have been a waste of a reply had it been produced in the standard time. It was a very much better reply because it was so much delayed. Perhaps I might also add there are occasions when Governments, knowing that a report is about to be debated, have published their reply a couple of days before and I imagine what led them to do that on those occasions would probably lead them to do it on future occasions as well.

*Lord Kearton*

19. Having been a member of that particular committee where the Government was very slow in replying—it gave its considered reply after about 15 months—I can say the committee was unhappy with the reply and asked the Minister—Mr Clarke in that case—to come along for an additional session. At the end of the day it was very pleasing that the Government accepted all the recommendations virtually, although it was after about two years,

which I think was greatly to the advantage of the NHS.

(*Mr Wheeler-Booth*) You are then agreeing with the evidence just given, which is that basically the remedy lies in the hands of the committee and its members, given the extraordinary freedom of the procedures of this House and of its private Members.

20. There was much heart-searching about whether we had the authority to have another go and bring back the Secretary of State; nevertheless he came.

(*Mr Wheeler-Booth*) You asked him to come. He does not have to come, but he will want to—

21. If I may make a general point, what has struck me is the great strength of the committees is that they are apolitical. Although they are manned by people from all parts of the spectrum of the House, when they actually start their work I am struck by the fact that they become completely apolitical; everyone is concerned to listen to the evidence, get the evidence, come to an agreed conclusion on the evidence, not on any preconceived position at all. That would seem to me to be the enormous strength of these committees and something which any revision of the system must maintain.

(*Mr Wheeler-Booth*) My Lord Chairman, I think often but not invariably. Sometimes, with some subjects you are bound to have political divisions and though in many cases it is very fortunate if you do not, there are issues—and there are many I can think of—on which you are bound to have a real difference of political view which is bound to come up in the committee. In such cases I would hope it would be done without asperity but also without fudging issues; and the majority, as you know, have the right to produce a report which should be coherent and, like a river, going from the Himalayas down to the Bay of Bengal coming out at a conclusion, which may have to be voted on. Personally I think there is much to be said for a pointed report which has a point of view and which says “This is what we think and why”, rather than, as occasionally happens, an element of papering things over and being rather cosy.

*Lord Tordoff*

22. I have to remind the Clerk of the Parliaments that the Ganges does actually come out into a rather widespread delta in the Bay of Bengal.

(*Mr Wheeler-Booth*) You have been there, but I have not.

*Chairman*

23. I think that very useful geographical reminder reminds me that time is moving on. This has been a useful introduction. I feel perhaps that we should now be turning to some more specific points. Before I do so, I would like to make one comment and ask one question. The comment is that Mr Wheeler-Booth asked if we were considering taking evidence from the European Parliament and other Second Chambers, and the answer to that is yes. My question is this: in your introductory remarks you mentioned,



[Chairman *Contd*]

and it became very clear in the subsequent discussion, that there is a general feeling that it would be useful if possible to enlarge our *ad hoc* committee work, and certain specific topics have been mentioned. I inferred from the Clerk of the Parliaments' introductory remarks that one way that could be done was by some transfer of resources. If that is not feasible or desirable, and if there is sufficient peer resources, then there is the question of staffing resources. Do I take it that in that case it would be possible for those extra staffing resources to be provided?

(*Mr Wheeler-Booth*) Within certain constraints, yes. One of the constraints is the availability of suitable people, which is a severe constraint. As you know, clerks are now recruited through the Civil Service Commission, unlike in the bad old days when I was recruited, and they now all have Double Firsts or whatever, and there are not that many people with adequate qualifications. The second constraint is the shape of the Parliament Office and its career structure, but that to some extent can be got round by the use of committee specialist assistants. However, I would go back to what Lord Dormand said, that if you have an objective and a policy which is thought out and put forward in your report which the House adopts, then it is up to me to produce the means to do it, which is why I feel unhappy being used as a sort of hammer to occasionally hit on the head projects on purely staff grounds. On the other hand, on this question of staff, I am profoundly disturbed at the way in which some staff have been over-worked by the perfectly understandable anxiety of committees to produce reports on big and important subjects and wanting to do more work because it passionately interests them without us taking on more staff to do it. When I say that one colleague was here last September when the House was in recess, drafting reports not only during the week but on a Saturday on more than one occasion, that just gives you a flavour of this kind of work pressure which I personally am very unhappy about. I think it is all right occasionally, and obviously all right if you are in a crisis, the Gulf or the Falklands, but it should not be part of the working routine, and it disturbs me and I do not think it is right.

24. I hear with a considerable degree of sympathy what you have been saying. We are all much indebted to the staff, and I suspect the committees themselves will be hearing in evidence from Lady Serota or Lord Flowers about the high esteem in which the staff of committees is held. Could I now turn to some specific points? You commented in your paper in paragraphs 35 to 37 on the European Communities Committee, and in paragraph 36 you referred to a "fundamental uncertainty" about the role of the European Communities Committee. We know, of course, that there has been a considerable growth in its work, and I was wondering whether you would therefore expand some of the comments you have made in these paragraph on the work of the Committee?

(*Mr Wheeler-Booth*) My Lord Chairman, as you know, I am not exactly un-European, from my previous role, but I do draw the attention of the Committee to the fact that over one-quarter of the

staff of the Parliament Office are used on European Communities Committee work, and I think it is over half, though I do not have the figures, of the peer committee time. Europe is very important, but whether over half is right—well, it is for your Committee to judge. The increase has been enormous. In 1975–76 we produced a lot of reports, some 35, with 1,015 paragraphs, but the average report lasted 29 paragraphs. Last session there were 26 reports, 2,451 paragraphs, and the average report was 94. If you compare the two, you will see what I mean. *This (indicating)* was an early one from 1975–76 and this was on Municipal Waste Water Treatment published in 1990–91—I just asked for a recently produced EC report. This recent report represents a major commitment in time and energy by the House, by its Members and by its staff—the whole process of producing the evidence, correcting it and all that; anybody who has done it knows what it means. Lady Serota in her paper, which I have been privileged to have a foresight of, has formidable figures about the increase of work, the increase in sub-committees and the huge increase in papers circulated. I would question whether the time has not come to give this very careful thought, bearing in mind that as long ago as 1976, the European Communities Committee reported that when the European Parliament was directly elected the House would have to review whether they should go on giving as much attention to Europe as they were then, and of course instead of it going down after 1979, it has gone up since. I mention three types of enquiry in the paper. There is a national interest in Europe and I think that is bound to continue to be part of the committee's work. It is a really important role, because it is not the job of the European Parliament to consider EC proposal from the national viewpoint, it is the job of our own Parliament, and I think that must continue. I also believe that what you might call the European "big issues" enquiries, on the EMU last year, have had a real value. That was, in my humble opinion, an admirable report and an admirable debate, and getting it out in that time was the most extraordinary feat. The House was interested in it, as was shown by the debate. The most questionable of the three is where a European draft directive is used as a peg for an enquiry which is really domestic. I would much prefer if you had a liaison committee and you could set up *ad hoc* enquiries if you want to look at something which is really a domestic problem, so you could do it fair and square. That should not be, so to speak, one of the legs of the European effort.

(*Mr Hayter*) Can I elaborate? I think that the Maybray-King terms of reference of the European Communities Committee were remarkable in the way they stood up over the years. That was partly because they were so elastic and I think we do need now to look and see whether there has not been a change in the documents that need scrutiny, that is, what is coming from Brussels, and the appropriate sub-committee structure to scrutinise them. I believe it would be true to say that increasingly the interesting proposals fall across the borderlines between two of the existing sub-committees; they no



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Chairman *Contd*]

longer fall easily in the present sub-committee structure. Secondly, the effect of majority voting in Brussels has meant there is less point than there once was in detailed scrutiny of minute points. The committee is better occupied by dealing with matters such as EMU or fraud. These are subjects which have recently been done by *ad hoc* sub-committees or sub-committees with their membership tailored for the purpose. Some enquiries indeed fall so much across sub-committees that it is very difficult to persuade any one sub-committee to take them up. I would like to suggest for your consideration that the number of standing sub-committees of the European Communities Committee should be considerably reduced and the number of *ad hoc* enquiries increased. I would particularly draw attention to the possibility that the artificial borders between the existing sub-committees encourages the development of special interests. As a particular explanation of that, I do think that in 1991 it is odd to have one sub-committee that looks at agriculture and another one that looks at the environment. Those to me are not two subjects that you can separate in that way.

25. I would not wish, of course, to prejudge our discussion with the Chairman of the European Communities Committee but there may be other points which members of this Committee may wish to put to the Clerks now. If not, there is one particular matter on which I would very much like your comment. That is this: I think we are approaching what could be a very crucial period in the development of the European Community with the Inter-Governmental Conferences due to conclude in December. I wonder whether from the point of view of staffing on the Clerks' side this would be a difficult or dangerous moment to make major changes in the structure of the Committee.

(*Mr Wheeler-Booth*) Well, my Lord Chairman, my suspicion is that the time would never be right, and that now when you are having your enquiry is the time to take the opportunity. The time that I was working with the Committee was about ten years—a long time—and they were always saying there were going to be great fundamental changes and it did not seem to work that way. I personally am rather sceptical about the promises about the IGCs or about 1992. I think it is going to be a very slow, gradual process. The role of the Committee is very much pre-legislative and is aimed at looking at problems beforehand. It is no good trying to shadow what the Government is doing—it is hopeless. It is the job of the Foreign Office and the department concerned to get on with the negotiations and the job of the Committee is to have thought before-hand. As an example of this I would cite an enquiry done long ago on the enlargement of the Community. It was done before the detailed negotiations with Spain, Greece and Portugal were conducted. The Committee asked for a lot of evidence about the effect on agriculture and industry and fishing and Spain and so on. The officials concerned said, "Thank God you have asked these questions because it allows us to put the economists to preparing the answers, and we ought to know them because the Government has agreed that enlargement is a good thing without any idea of

the cheque that we are, so to speak, preparing to sign or morally have signed." I think that the special role of the Committee is always to be ahead. If it produces reports on subjects that are going to matter, it is trying to say to the House, to the Government, to the public, and to the people in Brussels and Strasbourg, "Here is the problem, here is our analysis". I go back to Lord Bancroft's point about committees being good at analysis of the problem and giving some indication of some possible solutions. So my advice would be—very much more to what the European Communities Committee, which is much concerned with this, says subsequently—do not be deterred by siren voices which say "Now is not the time".

*Lord Thurlow*

26. Could I ask for clarification on one point? You have as Clerk of the Parliaments referred to the effect of majority voting as changing the scene to some extent. Is your point that this means that the views of our own Government on matters of detail become less weighty, so we need not bother about them so much?

(*Mr Wheeler-Booth*) Yes, my Lord Chairman. As long as unanimity was in place a national scrutiny system could, if the committees were really ruthless, hold governments and ministers to account, as, of course, the Danish system sought to do. But as qualified majority voting increases, you are in a much less strong position to say to your minister, "Why are you agreeing to this?" or "You are not to agree to that", because he can say "Awfully sorry, my dear chaps, but the others wanted it". That I think the history of the last few years in the EEC has shown over and over again: even the most determined resistance to certain policies by people that we can all think of has not actually stopped them going forward. The leverage the Committee or the House, or the House of Commons, can apply is less great. It is, I think, an additional reason why it makes sense for the committees to work directly on the Commission in Brussels and on the European Parliament, because the European Parliament is not a legislature as we understand it, it does have considerable input into Community proposals and what the Commission is doing. It is so unthinkable for a Member of our Parliament to be able to ring up a civil servant and say "What are you doing about X?" because the civil servant will say "Have you spoken to my Minister?"—but not in Brussels. That is the way it works. I think we have to adjust to those changes.

*Lord Dormand of Easington*

27. I am not sure, my Lord Chairman, if I may press the Clerk on this. Somebody has made the point that the Government of this country ought to be looking at shadowing and examining everything that the EC does. I really ought to preface my remarks, my Lord Chairman, by saying I am one of those who has not believed in our membership of the EC. I know we have lost the main cause but that is not to



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Lord Dormand of Easington *Contd*]

say that an awful lot of things do not have to be looked at—the CAP and so on. What is the difference between what the Government is doing, or supposed to be doing—and one hopes they are doing it very carefully indeed—and what is coming out of the EEC and a committee which would look at the same things? One could say really it is duplication of work. If that were the case I think one ought to shut up shop, and presumably it would not be the Government. My direct question is: do the Clerks think there ought to be a different approach? I think I am right in saying that we are both after the same ultimate purpose of trying to see what is wrong and what is right. Incidentally, I am not so concerned about the major issues but about some of the silly things which are coming out, like labelling on bottles or the latest thing on cigarette packets, and I think the man in the street is at least as concerned about those sorts of things as he is about EMU. Ought there to be any difference in the approach, which is essentially aiming at the same thing?

(*Mr Wheeler-Booth*) My Lord Chairman, I think Parliament is legitimately concerned on matters which affect the national interest, sometimes on quite small issues like the hall-marking of silver, and not to express on behalf of the public these strong views would be a dereliction of duty. But when it comes to the differing roles of Parliament and Government, the Government has to carry on the day-to-day negotiations in the EEC, and Parliament's role is to prod the Government into thinking about and taking up attitudes on issues which it thinks matters, given that we do not in this country just let the administration get on with it, as certain other Member States in the EEC are more inclined to do. The power of the executive in certain other Member States is greater than it is in this country, which is partly of course why the House of Commons and the House of Lords sit for so many more hours than any of these other Parliaments. I think the French Parliament is by the constitution limited, both in the number of days it sits and the number of committees it can set up and so on, and in its competencies under the Fifth Republic.

*Lord Boston of Faversham*

28. I wonder whether you might not agree that one of the differences—there have been referred to by Lord Dormand—between the approach of Governments and the approach of Parliament is on the comparative merits of particular matters? Governments, by their very nature, in the course of negotiations, would you not agree, tend to trade off one matter against another. A different approach by Parliament might be, might it not, that it would say that both of these matters are of considerable importance and you cannot choose between them on the basis of priorities or merits, therefore, Parliament would say, both of these points need protecting?

(*Mr Wheeler-Booth*) I quite agree. Indeed if you compare the success or lack of it of this country in negotiations on a number of major issues, there has been, and I think it is fairly public knowledge, a different emphasis by Ministers and the Foreign

Office on a whole series of issues since we have been a member of the EEC; they have sometimes been very much affected by what has been said in Parliament in taking up the stands they have, and Ministers have sometimes fought when their officials have told them “This is a very good deal” but they have fought and got more, partly in response to what has been said in Parliament and by the committees, the public, the press and so on. That is part of the process of democracy.

*Chairman*

29. I think we should move on to some more introspective and domestic issues. Before doing so, I do not know whether there is anything which the Clerk of the Parliaments or the Reading Clerk would like to say about the other Select Committee whose prestige is rightly high, as is the European Communities Committee, and that is the Science and Technology Committee? Do they feel that a switch of emphasis or change is needed and are there ways in which resources could be better utilised or more economically utilised than at present?

(*Mr Wheeler-Booth*) On my right is the expert. As a non-expert, I would say that I think the Science and Technology Committee does serve a very specialist constituency, very often outside the House itself, the scientists, the academic scientists, the administrator scientists, the Cabinet Office Science Unit and the specialist scientific press. It goes back to the point about the House and the Committee. A lot of its reports are hardly ever short, they are very well researched, the normal process has been a year-long enquiry, a major enquiry, though they did complete a short, quick one the other day on the science budget. I wonder if there is a case for shorter, sharper, sometimes less specialist enquiries, and also if there might conceivably be a case for taking on to the Committee some members who are laymen. The European Committee has an agricultural committee and some years ago the experiment of putting a non-farmer as chairman was tried—Lord Plowden was the choice and his experience was in the Treasury and industry—and he did bring the Committee round from a series of reports which were basically not unfavourable to what you might call the green lobby to a point of view which took much greater account of the taxpayers' interests. I think the Science Committee might consider a case for having, if you like, one or two devil's advocates on it to say, “Well, it is all very well you wanting to spend more money on this . . .” and so on. This is a subject which comes out very clearly from Paul Hayter's article in “Government and Opposition”, which I think the Committee has seen, certain well-worn themes which they have battled for and fought for but I think it might not have been a bad thing to have, I do not know, an ex-head of the Treasury on the Committee who might have put up the counter-arguments. I think there is something to be said against any committee which has too many members from a limited number of disciplines, but of course I say all this very tentatively because I am aware of the extremely high reputation of the Committee, both in



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Chairman *Contd*]

the House and abroad. The other small point I would make is that just as our European Committee has the fact that the Commons are spending more time on Europe than they used to and the European Parliament is spending vastly more time and money than it used to on reporting on European matters, the Science Committee has had the ultimate accolade of being copied in the Commons by the setting up of a new sub-committee of the Education and Arts Committee on science. That brings out the case for a certain amount of co-operation between the two Houses, at chairman or clerk level, or even at committee level, so as not to duplicate and to share the work around. It may indeed allow a certain diminution, and whether you need to go on having two sub-committees regularly producing these reports, never stopping, I just wonder.

(*Mr Hayter*) I promised to be well behaved and not disagree with the Clerk of the Parliaments, but can I break my promise in one very small respect and point out that the Chairman of the main enquiry on the Science Budget during the time I was Clerk was the ex-Head of the Treasury.

(*Mr Wheeler-Booth*) Lord Sherfield.

(*Mr Hayter*) Yes. Can I make one or two small general comments on this too? I believe that Lords committees are best if they avoid duplicating the House of Commons. That inevitably means, I suggest, that the Lords committees have to be somewhat specialised because the departmental committees in the Commons cover the whole broad brush of government policy; the Science and Technology Committee is inevitably somewhat specialised. I do not think that is a bad thing. Taking Lord Kearton's description originally, I would describe the Science and Technology Committee as being a think tank which causes civil servants and others to think and allows expert witnesses to put their views to Parliament, with the result that the Committee can, it hopes, influence the development of government policy. That is the role I see that Committee having occupied for the last decade, and it may be a role that other committees might choose in any new set-up. There have been in that period enquiries other than the long annual ones. I believe that the annual enquiries are best suited to the particular role the Committee adopts but, to give a couple of examples, the Committee conducted an inquiry in connection with the Local Government Bill in 1985 which was proposing the abolition of the GLC and the metropolitan county councils. Then in 1989-90 it conducted an even shorter enquiry, which I think lasted just under three months, into the Government's proposals for the scientific base of the Nature Conservancy Council. So it is a mix and I hope that the Committee will continue to be willing to adapt its procedures to the situation that arises at any given time.

*Lord Kearton*

30. Taking up Mr Wheeler-Booth's point, the two sub-committees have different chairmen. In one of the sub-committees on which I was privileged to serve we had chairmen like Lord Gregson, Lord

Carver and Lord Caldecote—not, in fact, professional scientists—and they really do take, if I may say so, a view which is not that of a professional scientist. The other sub-committee tends to deal with the future of the biological sciences and tends to be chaired by scientists.

(*Mr Wheeler-Booth*) I think Lord Kearton and the Reading Clerk know far more about it than I do. I agree with what you both said, but I still do have a wish for plain men on these committees. On the Law Sub-Committee of the European Communities Committee years ago there used to be a member, an ex-Conservative Member of Parliament, and she used to say "I simply don't understand what this report is driving at", and the then Chairman, Lord Diplock, used to say "Right, it must be rewritten, we must have it understandable by"—he was too polite to say so, but he meant the man on the Clapham omnibus.

31. On the medical research enquiry there was an extraordinary amount of technical matters, this country's hospitals, American hospitals, and so forth. That was chaired by Lord Nelson. He was an enormous asset to the Committee as Chairman and he was not a medical man. The Committee was full of medical men and he brought the thing down the whole time. I think it is more successful than you are pretending, or suggesting.

(*Mr Wheeler-Booth*) Touché.

*Chairman*

32. After that lively bout I was wondering, as time is again running on, if we might need to come back on this area, what I call the introspective area, at a later date. Perhaps we could just tentatively approach it this afternoon. It is on our agenda because of Lord Northfield's intervention. There are already three items. There is the main proposal of the Practice and Procedure Committee of 1977 and whether this is something which should be followed up perhaps by way of an experiment. The experiment which was proposed has been deferred now for fifteen years or so. There is the question of whether we should have more recourse, even after the rather unsuccessful Pilotage Bill experience, to referring matters to Public Bill Committees. And there are also the possibilities which have been trailed by the Clerk of the Parliaments in paragraph 40 of his very interesting and useful paper. I was wondering, first of all, if we could turn to the 1977 Practice and Procedure Committee and ask whether with hindsight the Clerk of the Parliaments feels that this is an avenue which is worth going down again, whether it is practicable, or whether he accepts the argument which a number of Peers put at the time, Lord Carrington among them, as to what use this would serve because the contentious items would not be suitable for it and only non-contentious matters would go before it and there would therefore not be any saving of time by using this procedure.

(*Mr Wheeler-Booth*) My Lord Chairman I think on the Practice and Procedure Committee my advice to your Committee would be not to go back to its proposals. I think they were in some measure



[Chairman *Contd*]

impracticable and, of course, that was compounded by the matter of timing and the fact that they were brought forward at a time when a Labour administration was in power to which the Conservative majority in the House of Lords had caused considerable difficulties, as you know much better than I do. I think in the light of that my advice would be to let sleeping dogs lie. When it comes to Public Bill Committees, again I would be chary of recommending further experiments for the reasons put in the paper—the Carrington fork argument. It is like Morton's fork and there is no answer to it. But I think on the question of an experiment on a legislative committee, the Committee might think further. I mentioned the time taken on legislation on the floor of the House and particularly in committee of the whole House. I would also mention the advantage of hearing evidence and getting the play of minds between members of a committee, who get increasingly informed, and experts, and I would have thought that something on the lines of a Special Standing Committee in the Commons in a certain subject area might be a more promising line to pursue than either of those other possibilities. Apart from anything else, a special standing committee allows you to take evidence, which a public bill committee does not.

*Lord Dormand of Easington*

33. The standing committee system in the House of Lords has not been very successful, has it?

(*Mr Wheeler-Booth*) The Public Bill Committee is the sort of committee which has been experimented in, just like a Standing Committee in the Commons (although not entirely, because other Members can attend) and it has not been very successful because of the Carrington fork argument. Standing committees in a wider sense have not been used here since 1911 and I do not honestly know whether they were a success or not before then.

34. I was very enthusiastic about the business of taking evidence at the time, it seemed to me to be a good idea. I think probably the Clerk is justifying what I am saying, or lending some support to what I am saying?

(*Mr Wheeler-Booth*) I agree, but I think taking evidence on legislation and producing and amending it on detailed matters in the light of that evidence is an avenue which the Committee might wish to consider further.

*Lord Bancroft*

35. You have made some very interesting suggestions in paragraph 40, would you rank any of those in an order of priority from your point of view?

(*Mr Wheeler-Booth*) I think a committee which considered legislation, domestic legislation, and was able to take evidence is a priority. That in fact comes up on several of these. I have not sought to work out in detail how they would work, but I would be quite willing to try if you wish.

36. That would be very interesting.

(*Mr Wheeler-Booth*) There are also, of course, the

very interesting suggestions of Lord Rippon which he has spelt out in some detail to the House and are certainly, I would have thought, worth considering.

*Lord Pym*

37. I would certainly agree with that, but is not the fundamental difficulty of any development in this area this: that the Government of the day introduces its legislation and it has to get it through within one session of Parliament if it is going to become law, and anything that is likely to cause any substantial delay to their principal bills is an extremely formidable obstacle to be overcome, however desirable it is intellectually? Is that not a fundamental problem?

(*Mr Wheeler-Booth*) I think in practice it would have to be done, my Lord Chairman, in such a way that the Government got its business, otherwise it is a non-starter.

38. Absolutely.

(*Mr Wheeler-Booth*) And that means doing it fairly quickly and fairly decisively and with help.

39. Is it reasonable to ask the Clerk of Parliaments whether he could be prepare a paper for us simply on the question of how in his view a committee or committees could facilitate the saving of legislative time on the floor of the House, for that would be one of its objects? I just wondered whether he would expand on some of the thoughts in this paper, upon what in his view might be a possible, practical way of saving legislative time on the floor?

(*Mr Wheeler-Booth*) I would certainly be prepared to do that. It really gets back to stopping having a committee of the whole House and taking it off the floor, with that very large saving, but of course there are objections from Members of the House who are used to taking bills on the floor of the House.

40. Members may not want it, and it may always go on the floor of the House, but looked at from your point of view, if you were going to get some savings of time, you would probably have a view as to how it might best be done?

(*Mr Hayter*) One suggestion is that rather than taking the Committee stage off the floor of the House, what you might do is to try to take some of the arguments off the floor of the House, dealing with them with the help of evidence and then, by that means, one hopes reduce the amount of time and maybe improve the quality of the time during the Committee stage. Of course it is absolutely right, as Lord Pym said, that any proposals for a new committee on legislation which interferes with the Government's timetable is not going to succeed. That was actually what torpedoed the Practice and Procedure Committee's proposals originally, and any proposal now has to meet that objection. One of the ideas in paragraph 40, not singling it out for priority purposes but as an example of this, is the idea of a committee to assess the environmental impact of all public legislation. Now you have on the front of a bill at the moment an explanatory memorandum which gives basic financial and manpower effects; a committee of this kind might in fact be designed to produce some sort of agreed view of what the



18 June 1991]

MR M A J WHEELER-BOOTH and MR P D G HAYTER

[Continued]

[Lord Pym *Contd*]

environmental impact would be. This is very much in line with what the Government are proposing at the moment in the European Community. I have a statement from a speech by the Secretary of State for the Environment of two months back in which he says that Britain has proposed amendments to the European Treaty to ensure the environment is properly considered in all future European Community law-making. I understand this includes the idea that there should be some sort of environmental impact assessment before proposals go to the Council of Ministers. It is possible that using an expert committee of this House one might manage in a non-partisan way at least to reduce the area of disagreement about the environmental impact of legislation.

*Lord Beaverbrook*

41. May I ask the Reading Clerk, in suggesting moving certain of the arguments off the floor of the House, if he is taking the example of the Copyright Bill, which I know well? There were many arguments during the course of that which could have been dealt with in a Public Bill Committee upstairs, non-political but extremely complicated matters, and there were perhaps half a dozen issues in the whole Bill which were of a political nature. Are you, in suggesting getting arguments off the floor of the House, suggesting some form of selection of amendments?

(*Mr Hayter*) I am not suggesting the Public Bill Committee procedure because that simply moves the practice of the House for amendments debating from the floor to a committee room. What I am suggesting is that in some limited area—and in that sense there is a form of selection which is quite different from the Commons selection, it would be self-selection—in some limited area evidence would be taken, and you would, I would hope, achieve a position whereby the experts in the subject gave their views, the Members of the House who were interested in it could question the civil servants, and we would avoid that carrier pigeon scene which the Clerk of the Parliaments

described earlier on. One would make the proceedings on the floor very much more to the point because some of the arguments would have been already covered in a report which would be available.

Lord Bancroft] My Lord Chairman, I think it would be very helpful, at any rate to me, if the Clerk of the Parliaments and the Reading Clerk could produce a note for us (a) fleshing out just a bit perhaps the notion of a select committee which looks at the environmental impact, as the Reading Clerk suggested, and (b) fleshing out a little more—it is already fleshy—Lord Rippon's notion of a committee to look into delegated legislation, because I think, if one has two specific examples to look at with the number of people required and the sort of time it might take, that would be an enormous help when discussing it instead of discussing it in limbo.

*Chairman*

42. I would ally myself to Lord Bancroft's suggestion but also add that I think it would be useful if the Clerk of the Parliaments and the Reading Clerk could flesh out what they have touched on about how the time of the House might be saved by Standing Committee technique or—

(*Mr Wheeler-Booth*) A Special Standing Committee. If it is not "special", you cannot have evidence.

43. Absolutely. Would it be possible for you to cover those three areas in a note for us?

(*Mr Wheeler-Booth*) Certainly.

[Chairman] It would be very useful. We have covered a large amount of ground. There are some other subsidiary matters in the last paragraph of the questions but perhaps we could ask for any comments in discussions through the clerkly side, if we could follow those matters up in that way. With that said, I would like very sincerely to thank the Clerk of the Parliaments and the Reading Clerk for what has been an interesting and valuable committee session. I think it has been interesting and valuable very largely, if I may say so, through their frank and fresh expressions of view. Thank you very much.



MONDAY 24 JUNE 1991

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Present:

Bancroft, L	Kearton, L
Boston of Faversham, L	Pym, L
Dormand of Easington, L	Thurlow, L
Jellicoe, E (Chairman)	Tordoff, L

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**Letter from Baroness Serota to the Chairman**

Thank you for inviting me to give evidence on behalf of the European Communities Committee to the enquiry into the Committee Work of the House. I will be pleased to do so on 24 June and will be accompanied by Fiona Martin, Clerk to the Committee.

The members of the European Communities Committee hope that the enclosed Report on the Committee's Working Methods will be useful to your enquiry. I should perhaps explain that before your Committee was appointed we set about our own review, partly in response to a distinct increase in the amount and importance of the scrutiny work which Sub-Committees were being called upon to do, partly to identify whether any changes in our practice were needed as a consequence of reforms in the Commons and elsewhere.

Our first conclusion is that the procedures devised when the Committee was first set up soon after the United Kingdom joined the Community have stood the test of time. Indeed we were struck by the foresight of the Committee's architects in drawing up such specific yet flexible terms of reference. The procedures they devised have enabled the House to be informed of the impact and merits of those Community proposals which raise important questions of policy or principle. There have of course been changes over the years, notably to deal with the new procedures introduced by the Single European Act in 1986 and with the increased pace of Community business which has accompanied the 1992 Single Market programme. Let me mention just one, our use of letters to Ministers (later reported to the House and published) to comment on the issues raised by fast moving proposals on which there is insufficient time to hold a full enquiry.

This increased workload is obvious to all involved in the Committee's work, especially those, whether peers or staff, who come back to it after some time. The statistics in Annex A may give you an idea: a steady increase in the proportion and number of documents requiring detailed scrutiny by Sub-Committees; a record number of reports—28—last session; an increase from 1000 to 1500 in the number of working papers considered by Sub-Committees during a session. This has inevitably stretched us all considerably.

We considered in detail how we could reorganise ourselves to cope better. Our conclusions, reached—after careful thought—were that juggling with the subject responsibilities of the Sub-Committees would make little difference; that the same number of Sub-Committees would continue to be needed; and that the staffing norm should be one Clerk per Sub-Committee. To achieve this an increase—of one—in the complement of Clerks assigned to the Committee's work is necessary.

Our other main conclusion concerns the InterGovernmental Conferences on Economic and Monetary Union and Political Union which were the subject of a major report in November 1990. As you know the Community Governments are now reaching a crucial stage in these negotiations, which may result in profound changes in the nature of the Community and the powers of its institutions. Sub-Committee E (Law and Institutions) is now holding a brief enquiry on the legal aspects of the proposals before the InterGovernmental Conferences in which these issues will be examined: we hope they will report before the Summer Recess. The InterGovernmental Conferences may result in Treaty changes which might well have a considerable effect on our scrutiny work. So we think that consideration of radical changes to our Committee's structure and procedures should await the outcome of the InterGovernmental Conferences.

Our review also considered government responses to our Reports and debates on them, matters of general Committee interest. You will see that the Committee is not happy with the present practice. There are often considerable delays before debates are arranged: we are in favour of a limit of one month from publication as a general rule. Nor is it satisfactory that the only Government response often comes in the Minister's speech at the end of the debate, with no chance for peers to follow it up. Far better, we think, for there always to be a written response in advance so that the debate can be a real exchange of views.

The Committee also hope that your Committee will consider the question of HMSO printing, publication and distribution of Committee reports. We realise that relations between the House and HMSO go wider than your enquiry and are of more general Parliamentary significance. But we are disturbed by the high cost



24 June 1991]

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charged to the public for Committee reports which places them beyond the budget of many individuals and even organisations. All the report and much of the oral evidence are now prepared for publication by the staff of the Committee Office on word processors which represents a substantial cost saving to HMSO's Vote leaving them responsible for type-setting the written evidence and distributing the completed publication. The Allied Service Vote ends in about eight months' time and negotiations between the House and HMSO will take place. Perhaps your Committee could recommend that the negotiators ensure that the price of reports reflects the actual cost of production. This is certainly not the case at the moment because, in spite of the savings we have introduced through the use of computers, the savings have not been passed on to the customers.

Serota  
12 June 1991

Written Evidence to the Select Committee on the Committee Work of the House from the European Communities Committee

CONTENTS

	Paragraph
Introduction .. .. .	1
Work of the Working Group .. .. .	5
History of the Committee .. .. .	9
Scrutiny: the issues .. .. .	13
Sub-Committees .. .. .	15
Recent Developments	
The House of Commons .. .. .	17
The Inter-Governmental Conferences .. .. .	18
Scrutiny in national parliaments .. .. .	26
Terms of reference .. .. .	30
Sift .. .. .	34
Role of the Select Committee .. .. .	44
Membership of the Select Committee and Sub-Committees .. .. .	45
Sub-Committee Structure and Remit .. .. .	46
Staffing .. .. .	49
Legal Work .. .. .	52
Publication of Reports .. .. .	56
Debates .. .. .	58
Follow-up to Enquiries .. .. .	59
Travel .. .. .	62
Conclusions .. .. .	65

- Annex A: Statistics relating to Committee's workload.
- Annex B: Hansard Extract from Debate on A Community Framework for R&D.
- Annex C: Membership of the Group, the Committee and Sub-Committees.
- Annex D: European Communities Committee Orders of Reference.
- Annex E: List of Sub-Committees.
- Annex F: Commons Standing Order No. 127: European Legislation Committee.



## EUROPEAN COMMUNITIES COMMITTEE

## Report of the Committee on its Working Methods

## INTRODUCTION

1. 1990 was a year of great changes. Political developments in central and eastern European countries accelerated the “wider/deeper” debate about the objectives and structure of the Community in years to come. The Inter-Governmental Conferences on Economic and Monetary Union and Political Union which began in mid-December had been prepared with this in mind. But another important strand to the debate about the future of the Community, namely the Community’s alleged lack of democratic accountability, gave rise to demands from the European Parliament for greater legislative powers, and a growing awareness in all Member States that national parliaments also need to be more effectively involved in the scrutiny of Community proposals. In addition the pressure to complete the single market in the areas still outstanding meant that a relatively high proportion of complex proposals were requiring scrutiny. The timing of some of these, subject to the co-operation procedure introduced by the Single European Act, was on occasion extremely tight. Nearer to home, the Commons Procedure Committee Report on The Scrutiny of Community Legislation (HC 622) recommended changes in scrutiny procedures for that House: many were accepted by the Government and brought into operation for this Session.

2. For the European Communities Committee the 1989–90 session was one of the busiest of recent years even compared to the previous peak in work in 1985–86. Some statistics giving an indication of the trend are set out in Annex A. The IGCs were the subject of a major enquiry, with 21 meetings between May and October. But there were also 27 other reports, a record for a normal length session since the earliest days of the Committee when reports were brief and progress of scrutiny was reported formally to the House. Last session proposals often had to be dealt with at speed, as decision making speeded up at Council level.

3. These factors—the changing face of Europe, actual and likely changes in scrutiny by the Commons and the European Parliament, and the Committee’s increased workload described above—led the Chairman to propose an informal enquiry into the Committee’s working methods. In her note to the Committee she said that “As an initial step it seems sensible to undertake an analysis of the Committee’s working methods to see how far they enable us to scrutinise Community legislation effectively and deal with the ‘other questions to which the special attention of the House should be drawn’. If the Committee agree I would propose to invite a few members of the Committee to help with this review on an informal basis and report back when it is completed.” The Committee agreed to this proposal on 16 October 1990.

4. Opening the debate on the Committee’s Report on the *Framework Programme on R&D* on 28 January 1991 Lord Shepherd made a number of proposals on the way the Committee’s debates are organised. The relevant passages from his speech are set out in Annex B.

## WORK OF THE WORKING GROUP

5. The members of the Group are listed in Annex C. We held five meetings and considered the Committee’s Working Methods, including the debates on its reports. During the course of our work we learned of the proposal by the Staff of the House Sub-Committee that there should be a Committee on the Committee Work of the House which was subsequently endorsed by the Offices Committee and agreed to by the House on 18 April. This report may be of assistance to that enquiry.

6. The Committee’s very flexible Terms of Reference (Annex D) are decided by the House on the Committee of Selection’s proposal at the beginning of each Session. They are therefore not open to change by the Committee. Questions of staffing and other resources are similarly not for the Committee itself to decide. Much of the Committee’s working practice is, however, not immutable. The basic procedure devised when the Committee was first established (Chairman’s Weekly Sift, Sub-Committee enquiries, Committee Reports for information or debate) is still followed today. But it could be changed. So can such matters as the number, size and remit of Sub-Committees (including *ad hoc*s), the form of enquiries and reports, the use of devices—such as Ministerial letters—short of full enquiries, and the balance between work on the two limbs in the terms of reference: “Community proposals” and “other questions”. Indeed there have, as members know, been a number of changes over the last few years, such as the increased use of correspondence with Ministers which is published every six months. The Group considered whether further changes were desirable.

7. We considered that the working methods of the Committee raised the following issues:

terms of reference; Chairman’s sift; role of the Select Committee; membership; staffing; sub-committee remit; legal work; publication of reports; debates; follow up to enquiries.

Each of these (sometimes overlapping) subjects is considered in turn below after a brief historical description.



24 June 1991]

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8. We were also aware that the review was instigated in part to identify whether any changes were needed in the light of external developments such as the reform of Commons scrutiny procedures and the recent and potential changes in the Community decision-making process. Another—perhaps more immediate—factor was the Committee's workload last session, when both peers and staff were stretched to the limits. But we considered that the starting point for an enquiry into working methods must be the job to be done. Although we have taken account of manpower resources we have thought it essential to concentrate on how best to tackle the tasks given to the Committee by the House.

#### HISTORY OF THE COMMITTEE

9. Shortly before United Kingdom Accession to the European Communities on 1 January 1973 the House set up<sup>1</sup> the Select Committee on Procedures for Scrutiny of Proposals for European Instruments (commonly referred to as the Maybray-King Report after its Chairman). The Committee reported twice. The major Report, dated 25 July 1973<sup>2</sup>, was debated on 6 December 1973<sup>3</sup> and the proposed terms of reference agreed on 5 February 1974.<sup>4</sup> After a change of Government the Committee was finally set up on 7 May 1974<sup>5</sup>.

10. The whole scrutiny system rests on an undertaking given by the Government that they will not, except in special circumstances, agree to any proposal in the Council of Ministers until it has been cleared by the Committee, an undertaking similar to that given to the House of Commons and embodied in the Resolution of the House on 30 October 1980. Timing is therefore of the essence of our scrutiny system.

11. The Committee's current terms of reference, like its powers (Annex D), are broadly the same as in 1974:

“to consider Community proposals, whether in draft or otherwise, to obtain all necessary information about them, and to make reports on those which, in the opinion of the Committee, raise important questions of policy or principle, and on other questions to which the Committee consider that the special attention of the House should be drawn.”.

12. The Committee adopted the following working methods:

- (i) the Chairman's sift;
- (ii) Sub-Committee-based enquiries, with special emphasis on proposals' legal implications; and
- (iii) reports to the House for debate or information.

Initially special arrangements were needed to clear the 16 month backlog. Later enquiries became longer—on average—than in the 1970s, with a much greater reliance on witnesses from outside Whitehall. More recently the Committee has developed a flexible range of procedures: letters, reports based on written evidence alone, full enquiries of widely varying length. But the main structure of our work has remained the same.

#### SCRUTINY: THE ISSUES

13. Opening the debate on the Maybray-King Report in December 1973 Lord Windlesham (Lord Privy Seal) said the House should discuss “how the British Parliament could best evolve procedures to enable us to discharge our responsibilities concerning proposals emanating from the other side of the Channel which can and often do affect the everyday life of people in this country”. (Col 760.) Lord Shepherd, then in Opposition, saw three prime objectives:

- acquiring information and knowledge;
- securing a full appreciation of the consequences of any decisions and proposals; and
- influencing Ministers.

Accession had meant a marked shift in the balance between the Executive and Parliament and the time had come to restore that balance. The Committee probably has the same objectives today, although it now recognises that its influence can also be exercised through other Community institutions. Reports are now normally sent to the Council Secretariat, to the current Presidency, to the Chairman or Rapporteur of the relevant Committee in the European Parliament, to the Cabinet of the Commissioner in charge of the legislation as well as to all national parliaments' scrutiny committees.

14. The basic issues raised in the debate in 1973 are also still key ones: the structure of the Committee and its Sub-Committees; resources—in terms of money, staff and—not least—peers; availability of documents; timing of enquiries; relations with the Commons and the European Parliament. The foresight of those involved in the establishment of the Committee is remarkable, though perhaps even they did not realise that scrutiny would be seen as so important almost 20 years later.

<sup>1</sup> 20 December 1972.

<sup>2</sup> HL (1972–73) 194.

<sup>3</sup> Hansard Cols 759–839.

<sup>4</sup> Hansard Cols 712–18.

<sup>5</sup> Hansard Cols 369–70.



24 June 1991]

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## SUB-COMMITTEES

15. The number of sessional Sub-Committees was originally five but seven by 1975-76. It dropped to six in 1986-87 to allow for staffing *ad hoc* enquiries, whether *ad hoc* Sub-Committees of the European Communities Committee or *ad hoc* Committees set up by the House (eg on Unemployment or Murder and Life Imprisonment).

16. Their subjects have changed slightly over the years. The main changes are that Sub-Committee A originally dealt with finance, economics and regional policy, but acquired external relations, trade and industry from Sub-Committee B in 1986-87, that Sub-Committee then taking the subjects covered by the old Sub-Committee F. Environment was given its own Sub-Committee in 1975, first called "G" but becoming "F" in 1986-87. Consumer matters have alternated between Sub-Committees C and D according to their respective workloads. There have been 11 *ad hocs* in all, some based on a sessional Sub-Committee, others strictly multi-disciplinary. The Sub-Committees and the *ad hoc* Sub Committees are listed in Annex E. Sub-Committee E's particular role is described below.

## RECENT DEVELOPMENTS

*The House of Commons*

17. The House of Commons Procedure Committee recently carried out a very detailed enquiry into the Scrutiny of European Community Legislation under the Chairmanship of Sir Peter Emery. Our Chairman gave evidence of this Committee's role and work. The main results of the enquiry are that the European Legislation Committee is continuing to work in broadly the same way as before, albeit with terms of reference requiring it to consider a wider class of Community documents. The main change has been that proposals recommended for debate in standing committee are now sent to two specialist standing committees (not five as the Report recommended). Standing Committee A covers matters within the responsibility of MAFF, Transport, Environment and analogous responsibilities of the Scottish, Welsh, and Northern Ireland Offices; Standing Committee B, other departments. The Standing Committees question Ministers on the proposals they are to debate, but cannot hold full enquiries. Those who can, the departmental Select Committees, are continuing their practice of monitoring the Community functions of Government departments as part of their work. Some Committees (Agriculture, Energy, Environment) have chosen Community subjects more often than Committees monitoring other departments. Sometimes our Sub-Committees have chosen not to enquire into a certain subject to avoid duplicating their work. This has not been a problem: there is plenty else to do at the moment.

*The Inter-Governmental Conferences (IGCs)*

18. The Committee held a major enquiry into the issues to be discussed in the IGCs on Economic and Monetary Union and on Political Union: the report was published and debated shortly before the IGCs were convened in December 1990. During the period when this group has been meeting the IGCs have been discussing proposals which may have a marked effect on scrutiny. As the negotiations are between governments and hence subject to diplomatic rules on confidentiality, we—unlike some other scrutiny committees—have not been able to obtain all the relevant documents. But along with other members of the Select Committee we received a copy of the draft Treaty on Union drawn up and made public by the Luxembourg Presidency towards the end of our deliberations. The situation is still highly fluid.

19. Members of the Committee are well aware that majority voting places limits on the ultimate effectiveness of scrutiny. Even if the Committee convinces the Government of its views, British Ministers can still be outvoted in the Council. The co-operation procedure introduced by the Single European Act brought new constraints in the form of time limits at the later stages of the procedure. When the Committee reviewed how the Single European Act had affected its work, the conclusion was that the Committee was coping but that careful planning and timing of enquiries were more important than ever before.

20. The four main areas under discussion in the IGC on political union which would affect the Committee's work are:

- (a) a widening of the policy areas for which the Communities have responsibility (transfer of competence);
- (b) increased majority voting;
- (c) changes in the Communities' decision-making structure and in the forms of Community legislation; and
- (d) the new "pillars" of a European Union.

21. Current proposals before the Conference for the new Treaty could confer express competence to the Community in the following fields: transport safety, workers' protection and information, social security and social protection, co-ordinating rules for animal experimentation, energy, transeuropean networks, human health protection, education, culture, consumer protection and development co-operation. It should be



*24 June 1991]**[Continued]*

noted, however, that the principle of subsidiarity would be included in the Treaty for the first time as a general principle. The present draft says that action shall be taken at Community level "if and insofar as those objectives can be better achieved by the Community than by the Member States acting separately because of the scale or effects of the proposed action". The extent of Community competence is of fundamental importance for the Committee in that the scope of its remit is determined by that of the Communities.

22. The way in which majority voting and the co-operation procedure affect the Committee is described above. The current draft would extend majority voting in social affairs. It leaves open the question of voting rules in many other areas.

23. The European Parliament is pressing for the IGC reforms to give them the power to initiate legislation (at present a Commission prerogative and duty) and the power of co-decision in legislation. The Presidency's draft Treaty provides for the European Parliament to have power not of legislative initiative but to request the Commission to make proposals. A complex form of co-decision is proposed for draft "Laws", a new form of legislative instrument, equivalent in some respects to enabling legislation in United Kingdom law. It might involve an increase in the delegation of powers to the Commission, whose decisions are at present not subject to scrutiny. The Committee's work would be affected by the deadlines for various stages of the procedure, and its potential influence indirectly reduced in line with British Ministers' loss of control over the final outcome.

24. There is a proposal to set up a Union with three pillars: the first would be the European Communities; the second, a common foreign and security policy; the third, co-operation on home affairs and judicial co-operation. Common foreign policy would mark a significant step onward from the present political co-operation arrangements. At present political co-operation is considered to be confidential and not subject to our scrutiny procedures. The third pillar would mean that a Treaty set out the rules for co-operation between Member States governments which has already been taking place, but outside the Treaty framework. The emphasis is on Ministers acting within the Council, with little role for the Commission or the European Parliament.

25. On the monetary union side the main question for scrutiny purposes is the independence or accountability of a possible central monetary authority. This was discussed in detail in the Report on Economic and Monetary Union and Political Union. The IGC does not appear yet to have resolved the issue, although reports suggest that most Member States favour independence.

#### *Scrutiny in national parliaments*

26. Following a decision at the Speakers' Conference in Madrid in June 1989 scrutiny committees have for the first time been meeting six-monthly, the meetings being hosted by the national parliament of the country holding the Council Presidency. The Committee has participated fully in these meetings, now called the Conference of European Affairs Committees.

27. In the last two years scrutiny committees have been set up in several Member States Parliaments for the first time, so that now all Member States are represented at the Conference. The committees have widely differing roles. Several, most recently the Belgian Senate, have consulted us about our working methods.

28. The only direct parliamentary control of Ministers is by the Danish Folketing Market Committee. But their practice of mandating Ministers on important proposals is unlikely to be emulated here because all the proceedings are private. Other Committees receive all IGC documents from their Governments; and receive six-monthly reports on the implementation of Community legislation for example. Some include MEPs either as full or as non-voting members.

29. HMG has proposed that the IGC agree a declaration stressing the importance of scrutiny by national parliaments. The IGC on Political Union is also due to discuss proposals for a Congress, a second chamber at Community level representative of national parliaments or of the regions. There has apparently been little progress on this item.

#### *Terms of reference*

30. The present terms of reference are wide enough to enable the Committee to carry out almost any enquiry it chooses. Herein lies undoubtedly a source of strength; the Committee does not have to worry about its own *vires* or "competence" (in the Community sense). This remit has led to great flexibility in the type of enquiry undertaken. Nor is the Committee's freedom and flexibility constrained by competing claims from other Committees in the House. (The Committee sometimes chooses not to enquire into matters chosen by Commons Departmental Select Committees. But this is from a desire to avoid duplication rather than from an external constraint.) In the absence of Commons-style departmental committees in this House the only border disputes are with Science and Technology, and these are almost non-existent.



24 June 1991]

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31. The terms of reference require the Committee to report on those Community proposals which raise questions of "policy and principle" and on "other questions". From the first is derived the explicit scrutiny duty, reactive, detailed, and sometimes tedious. The second allows the Committee to expand enquiries on proposals and adopt a more proactive, broader brush approach. For example, a Court of Auditors report triggered off the seminal report on *Fraud against the Community*; Sub-Committee D's enquiry into CAP reform is wider than an examination of the MacSharry proposals on which it is based.

32. The Committee has always seen its primary task as the detailed scrutiny of proposals to elicit how they will affect the United Kingdom and the Community and report its findings to the House to inform peers and to influence Ministers' decisions in Brussels. But to do so with no attention to the wider debate both in the United Kingdom and in the Community would be unwise. As for the choice of subjects the Committee's work on topical subjects is of obvious importance: the particular attention paid by the House to reports on such subjects (eg the Report on Economic and Monetary Union and Political Union) speaks for itself. But most enquiries still involve scrutiny of less wide ranging proposals.

33. The current negotiations on political union in the Inter-Governmental Conference are confidential, and it would be premature to predict their outcome. But reports suggest that there is considerable support for a European Union structure with several "pillars", of which the present European Communities would be only one (see paragraph 24). The constitutional and institutional implications are considerable, particularly in so far as Member States' decisions are to be taken in some cases by qualified majority. Serious consideration will need to be given in due course as to how the House should cope with the new arrangements. One option would be for the Committee's remit to be widened to cover all Union proposals. At the time of the negotiations leading to the Single European Act the Committee held an *ad hoc* enquiry (*European Union*, 14th Report, 1984-5, HL 226) followed by a brief enquiry into the implications for its work (12th Report, 1985-6, HL 149). The report on *Economic and Monetary Union and Political Union* considered some of these issues before the ICGs were convened. Sub-Committee E is considering holding an enquiry into the questions of legal significance raised by the current draft Treaty.

#### *Sift*

34. The sift system, whereby the Chairman advised as necessary by the Legal Adviser and the Clerk selects those proposals which require further scrutiny by Sub-Committees, was devised by the Maybray-King Committee.

35. Commission proposals are published when they are submitted to the Council, and at this point, with certain exceptions, copies are supplied by the Government to both Houses of Parliament. Some 800 documents which fall within the category of depositable documents defined in the Commons scrutiny committee's terms of reference are deposited annually in this way (see Annex A). The appropriate Government Department then prepares an explanatory memorandum, summarising the proposal and indicating its legal, financial and policy implications, the procedure to be followed in negotiations and the likely timetable of its consideration by the Council. This memorandum is signed by a Minister and is submitted to Parliament, usually within a fortnight of the deposit of the proposal. Supplementary memoranda are submitted at appropriate intervals during Council negotiations to keep Parliament abreast of major developments and in particular of Commission amended proposals.

36. A significant number of important documents are not deposited on the ground of confidentiality. They are not draft legislation and usually not public documents. This category includes documents submitted to Inter-Governmental Conferences convened under Article 236 of the EEC Treaty (such as the current ones on economic and monetary union and political union) and those tabled for meetings of the European Council (the meetings of Heads of State and Government and of the President of the Commission, formally recognised for the first time in Article 2 of the Single European Act). Special arrangements apply in respect of the common positions agreed by the Council during the co-operation procedure and the mandates given to the Commission when it is to act on behalf of the Community in international negotiations. The Government has sometimes made such documents available to the Committee once they were in the public domain. One example is the Luxembourg Presidency draft Treaty on Union discussed above.

37. The number of proposals deposited is far too large for the Committee to give detailed scrutiny to all of them, and many are of comparatively small importance. The Chairman of the Committee has the responsibility of sifting the more significant from the less important proposals each week when the House is sitting (and occasionally during the recess). As soon as the Explanatory Memorandum is available, she decides whether a proposal requires further attention or not. Those which do are remitted to the appropriate Sub-Committee.

38. The "Chairman's Sift" is endorsed by the Committee at its next meeting. A standard-form "Progress of Scrutiny Document" is then published listing the proposals sifted since the previous edition, including (under the appropriate Sub-Committee) all proposals which are awaiting, or undergoing, detailed scrutiny. This also includes a cumulative list of proposals recently reported to the House (by letter or report) with the date on which they were or are to be debated where appropriate.



24 June 1991]

[Continued]

39. Nearly a half of the proposals now deposited are remitted to one or more Sub-Committees. More often than not Sub-Committees decide not to give further consideration to proposals sifted to them: they are then “cleared” and the parliamentary reserve on them in the Council is lifted. About a tenth of proposals are the subject of full Reports to the House (see Annex A). An increasing number—about a further 20 or 30 per year—are the subject of letters to Ministers.

40. Is this the correct proportion to sift? The Maybray-King Committee originally had in mind about 5 per cent. This would have meant rigorous pruning of the list. But from the early days of the European Communities Committee the Chairmen have considered that a larger proportion merited further scrutiny and let through—on average—about one third of the proposals. The “on average” is significant. The rate fluctuates both over time and from one Sub-Committee to another in line with the pattern of Commission activity. The sift aims to be objective in the sense that Sub-Committees receive proposals of legal, financial or policy importance irrespective of their existing workload, on the grounds that it is for a Sub-Committee itself to determine whether further scrutiny is required. The result is sometimes that a busy Sub-Committee must either give time at the end of evidence sessions on rather perfunctory scrutiny of items with no prospect of detailed examination, or else leave scrutiny till after the enquiry, when it may be too late to catch the Council bus or decide to write to Ministers on specific issues arising from the proposals.

41. The present sift system is an efficient way to identify the proposals which merit further consideration, but we considered whether improvements could be made to the way the sift works in practice. Although greater involvement by the Select Committee (or a panel of Sub-Committee Chairmen) could resolve the occasional border disputes between Sub-Committees it would undoubtedly mean more meetings, often at short notice. Another option would be for the Chairman to consult the Sub-Committee Chairmen and Clerks informally before the sift although it might be logistically difficult to consult Chairmen on Explanatory Memoranda which arrive only just before the sift. Some documents are at present sifted to Sub-Committees for information not because they are considered likely subjects for enquiry themselves but as background to current enquiries or to follow up earlier work. There has been consideration over the years as to how to fit them into the sift categories.

42. Members of the Committee are well aware of the crucial question of timing and planning in the Committee’s work. This has long been a Committee concern. The recent speeding-up of Community decision-making has exacerbated problems of timing. The consequences have been, first, that some enquiries have had to be more rushed than Sub-Committees would like; second, where Council decisions intervene before the enquiry ends the Committee’s report is unlikely to be as influential. Because of the increase in fast moving proposals greater flexibility as to the length of enquiries has been needed. They now range from reports based on written evidence alone to full enquiries lasting about six months. A particular innovation has been the use of letters to Ministers on the issues raised by fast moving proposals. They are now published six-monthly and have attracted some public interest as well as Ministerial responses and listed separately in the Progress of Scrutiny document to remove uncertainty in Government departments about whether documents have been cleared.

43. A related issue is the stage at which the Committee’s work on proposals should begin. Whether to move upstream into the pre-proposal stage was much discussed during the Commons’ recent discussions of the reform of their scrutiny procedures. Although the category of depositable documents has been widened (see their Terms of Reference at Annex F) their decision was that the European Legislation Committee would stick to formal, published documents. Commons departmental committees have, by contrast, begun work on Community subjects before the Commission published its proposals. While this undoubtedly gains time, the Commission have been reluctant to give evidence on documents before they are published, submitted to the Council and sent to the European Parliament. To our knowledge no other national parliament begins work at the draft proposal stage although the Danish Market Committee, which works in circumstances of strict confidentiality, probably hears of significant impending proposals from their Ministers. Another way of starting work early in the decision making process is to hold enquiries at the Green or White Paper stage, that is, on Commission Communications. This was successfully done by Sub-Committee D (*Rural Society*) and Sub-Committee A (*European Agreements with Poland, Hungary and Czechoslovakia*—where more details emerged during the enquiry). But as Sub-Committee C’s enquiry on *Young People* as shown it can be hard to structure an enquiry early in the Community consultative process.

#### *Role of the Select Committee*

44. The Sub-Committees function to all intents and purposes as full Committees, with the Select Committee only rarely amending their draft reports. Until recently the Committee itself thus had a largely formal role consisting mainly of endorsing Sub-Committee work, although from time to time discussions were held with senior visiting officials on policy matters of mutual concern. It has recently complemented this work with other activities: deliberations on issues of general interest to the Committee and Community; monitoring progress in the IGCs by informal meetings with Ministers; visits from equivalent committees in other Member State parliaments; preparation for the six-monthly meetings of Community scrutiny committees and the recent Conference of Parliaments of the European Community (“Assizes”).



24 June 1991]

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*Membership of the Select Committee and Sub-Committees*

45. Sub-Committees make considerable demands on peers' time and particularly on their Chairmen. No other national Chamber in the European Community involves so many members in the operation of its scrutiny system. There are currently 78 members serving on the Committee and its Sub-Committees. Recruitment and attendance has been generally good recently, with *ad hoc* enquiries even more popular than sessional Sub-Committees.

*Sub-Committee Structure and Remit*

46. As mentioned in paragraphs 15 to 16 the original number of standing Sub-Committees was expanded soon after the Committee was set up but was reduced in 1986 by one. *Ad hoc* Sub-Committees are sometimes set up in addition to standing Sub-Committees. Sometimes a Sub-Committee has been asked to meet much less frequently to accommodate an *ad hoc* enquiry. Our Sub-Committee experience varies according to the Sub-Committees on which we have served. Their differences in ethos and practice may partly stem from their terms of reference, but seem mostly to have emerged over the years as each Sub-Committee's knowledge of its field developed.

47. However, there are certain common trends. In the past, most Sub-Committees met fortnightly as a rule, with occasional weekly spurts. (Sub-Committee D (Agriculture and Food) with its consistently fast flow of proposals was the exception). Nowadays nearly all Sub-Committees usually meet weekly (and occasionally even more often). Some choose to because enquiries seem to gel better that way; others are obliged to by the pace of their work.

48. We considered in some detail various ways of reallocating Sub-Committee responsibilities on an efficient and equitable basis. One option would be to provide for a Standing Sub-Committee prepared to undertake *ad hoc* enquiries, with additional co-options for each enquiry. An alternative way of providing the multi-disciplinary approach increasingly needed would be to co-opt members from one Sub-Committee to another for a particular enquiry. This has worked well for both Sub-Committee D's *Nitrates in Water* enquiry and the enquiry on *Economic and Monetary Union and Political Union* (where several peers with constitutional expertise joined the existing members of Sub-Committee A).

*Staffing*

49. It was put to us by the Sub-Committee Clerks that it has become hard—if not impossible—for a Clerk to serve two Sub-Committees satisfactorily. (The exception being Sub-Committee E, with its legal staff taking most of the load). In this context the group was also aware that clerks have many other duties—on division and minute duties; clerking private bill committees; at international assemblies—which often make conflicting demands on their time. Late nights on House duties must sometimes be followed by preparation for Sub-Committee meetings the next morning.

50. Specialist advisers have traditionally been a great asset, assisting Sub-Committees by their experience and expertise. It appears, however, to be increasingly difficult to recruit—in the short time sometimes available—advisers willing and able to devote sufficient time to Committee work to make a significant contribution to our enquiries.

51. The Committee recruited a Specialist Assistant who was an agricultural expert but the post is currently vacant. The value of specialist assistants is under review by the Committee on the Committee Work of the House.

*Legal Work*

52. Sub-Committee E is unique among Sub-Committees in having detailed terms of reference namely: "To consider and report to the Committee on:

- (a) any Community proposal which would lead to significant changes in United Kingdom law, or have far-reaching implications for areas of United Kingdom law other than those to which it is immediately directed;
- (b) the merits of such proposals as are referred to it by the Select Committee;
- (c) whether any important developments have taken place in Community law; and
- (d) any matters which they consider should be drawn to the attention of the Committee concerning the *vires* of any proposal".

They require it to consider large numbers of proposals to vet questions of *vires*, Treaty base, and legal implications. These functions place a heavy burden on the Chairman (advised by the Legal Adviser and Assistant), and the Sub-Committee as a whole takes this scrutiny role most seriously.

53. The power to report to the Committee on whether any important developments have taken place in Community law is no longer of much significance. There is now a wide body of lawyers and others in the United Kingdom who are aware of the impact which Community law has had on the United Kingdom's legal



24 June 1991]

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system and who follow carefully developments resulting from the Court's case law or from Community legislation. Although Sub-Committee E is regularly informed in this context of important European Court cases, it has never expressed comment or criticism of them or reported to the House on them. Sub-Committee E's mandate to examine any Community Proposal which would lead to significant changes in United Kingdom law or have far reaching implications for areas may on occasion influence its selection of a subject for enquiry. More usually it conditions the members' opinion on a point arising in the course of a wider enquiry. It remains an important feature of the Sub-Committee's work. As to *vires*, the work of the Sub-Committee on the use of the new powers provided by the Single European Act has in recent years been the most important exercise of this mandate. It remains a function of considerable importance and we believe that the work of the Sub-Committee on this is appreciated by the Government, even if they do not always agree with the Sub-Committee's views on particular issues.

54. The use of Letters to Ministers as a procedural device has been particularly valuable to Sub-Committee E since it has enabled it to keep a close watch on the use of the new powers conferred on the Council and the Commission by the entry into force of the Single European Act. This continuous monitoring and swift *ad hoc* response has in our view been more effective than a large scale general enquiry into the use of Single European Act powers could possibly have been.

55. The other arm of the Sub-Committee's work is closer to other Sub-Committees', except that its enquiries tend to be among the most detailed of all. Because of the recent arrival of several complex proposals it has a full programme planned for the foreseeable future.

#### *Publication of Reports*

56. Members of the Committee are often unhappy at the time lags between the end of the enquiry and the publication of the reports, and from that point until the debate. The reason for the first is often the huge task of preparing and proof-reading the oral and written evidence (very much more than in the early days of the Committee). This is essentially a question of the manpower available for a detailed but important job which has to be done at the same time the next enquiry is being set up. Several Clerks think it would be worth recruiting proof-readers to speed things up. For while it is true that those drafting the Report have to read and analyse the evidence this is a separate exercise from proof-reading for typographical mistakes. This problem is shared by other Select Committees. But the time constraint of Council decisions is unique to this Committee. It is this time pressure which has led to the Committee sending Ministers a copy of the Report in confidence before publication when Council decisions are imminent, a practice which gets our views across in time but means the Government sees the Report before the Opposition or other members of the House. The delay in publication is normally caused by the printing of the evidence not the report: the latter, now prepared on computer disk, can be published very quickly if necessary (as was done for the Report on the *Delors Committee Report*).

57. We also considered a parallel issue, namely whether the practice of sometimes publishing slimline versions of the Report only as well as the Report with evidence should be continued. This practice was devised to provide a more accessible version of Reports of general interest to those who might be deterred from obtaining the full version on grounds of bulk or cost.

#### *Debates*

58. Even though the main focus of the Committee's work is its enquiries, it is in debates on them that reports reach the wider audience of peers to which the reports are addressed. The timing of debates and hence delay between publication and debate is in the Government's control. Lord Shepherd has suggested a one month deadline from publication for debates to be arranged. The Standing Orders already allow Motions on Select Committee reports to be taken before Public Legislation. So it would only be a small change to list them as a separate category in No Day Named, to which such a deadline would apply.

#### *Follow-up to Enquiries*

59. The Government have undertaken to respond to all European Communities Committee Reports either in writing or in debate. Responses of the latter type have been less than satisfactory in substance on several occasions and always frustrating in that they come at the end of the debate, giving members little chance to react to the response. The paradox is that the most important reports sometimes get the least useful responses.

60. Sub-Committees do not normally follow-up their reports on a systematic basis to see how far their recommendations have been followed. They consider that it would not be a productive use of resources which should be devoted as far as possible to scrutiny of new proposals. There are, however, occasions when such monitoring is valuable, namely when new or revised proposals raise similar issues. Ministerial letters are often used for this purpose.



24 June 1991]

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61. There is evidence to suggest that our Reports are widely read and respected. And the changes to draft legislation before adoption by the Council are often in line with the views we have expressed, the Merger regulation being a good example. The analysis of the Draft Treaty on Union at Annex G<sup>1</sup> shows how the Committee's thinking may have indirectly influenced the Inter-Governmental Conferences. But, unlike other Select Committees which act in dialogue with Government, we have one voice in a much wider debate at Community level. Our influence is therefore extremely hard to measure.

#### Travel

62. The Committee and Sub-Committees undertake visits—both in this country and other Member States—when they are considered to be an essential part of specific enquiries. Visits outside the United Kingdom are by small groups on grounds of cost. In addition, clerks travel to sessions of the European Parliament (as they have done since before direct elections) to build up links and obtain information to assist Sub-Committee enquiries. At present such trips are all to Strasbourg. The European Parliament's staff responsible for links with national parliaments are now part of their Committee staff. Their Committees meet in Brussels. We therefore considered whether clerks should also visit Brussels. The Chairman of the Select Committee and Sub-Committee Chairmen also visit the European Parliament once every two or three years, but have not visited the Commission in Brussels except as part of enquiries.

63. Since November 1989 Committee representatives have attended the six-monthly meetings of the Conference of European Affairs Committees described in paragraph 26. Sub-Committee Chairmen have also attended hearings and colloquia organised by the European Parliament when time allows and the subject is of interest to the Sub-Committee.

64. The total cost of travel in the financial year 1990–91 for the Select Committee, the six Sub-Committees and two *ad hoc* Sub-Committees was £28,835.

#### Conclusions

65. The Committee's work can sometimes be a frustrating business—as it inevitably must be when the tasks worth doing outstrip the time available to do them. This is balanced by the knowledge that it enjoys a high reputation well beyond Westminster at a time when scrutiny by national parliaments is increasingly recognised—by HMG and in other Member States—as an important part of Community decision-making.

66. The Commons have introduced new scrutiny arrangements, with two specialist standing committees empowered to question Ministers on proposals previously identified as significant by the European Legislation Committee. But the Commons system is still centred on debate rather than on enquiries and reports. There is no need to adjust our procedure because of their reforms.

67. The Inter-Governmental Conference on Political Union is more likely to affect the Committee's work. Should the European Parliament be given powers of legislative initiative the Community's decision-making pattern would change. Our present scrutiny procedure, which begins once the *Commission* publishes a proposal and submits it to the Council, would probably need to be adjusted. But we consider that our aim should remain the same, namely influencing Ministers at the Council stage of negotiations. Co-decision, as the name implies, would mean a sharing of power by Council and European Parliament. Whether or not it was accompanied by majority voting it would affect the exercise of power of individual ministers, and, indirectly, individual parliaments' influence over events. We consider however that scrutiny must always remain focused on the Council, Ministers remaining accountable to Parliament for their part in Council decisions.

68. This context—of imminent major change in the Community's decision making structure—is not one in which we consider it would be wise to make recommendations for radical changes in our procedures. Better to leave that until the new institutional structure of the Community is in place. Two reforms in quick succession would cause disruption to little purpose.

69. Further, the present state of IGC negotiations suggests that there may be an agreement to set up a European Union of which the present European Communities are only one part. Other so-called pillars of the Union would consist of a common foreign and security policy and of co-operation on home affairs and judicial co-operation. Whatever the detailed arrangements in these wide and vital policy areas there is bound to be an increase of decision-making at European level, and a corresponding move away from decisions in Whitehall. Whether or not the European Communities Committee should be given the task of scrutinising the two new pillars of European Union would be a matter for the House. Our main concern at this stage is to draw attention to proposals of great constitutional significance which we hope that the Committee on the Committee Work of the House will be able to investigate on the House's behalf.

70. We have considered how the Committee's working methods could be improved pending the outcome of the Inter-Governmental Conferences.

<sup>1</sup> Printed as Appendix 3 to the Committee's 17th Report, 1990–91, *Political Union: Law-Making Powers and Procedures*, HL Paper 80.



*24 June 1991]**[Continued]*

71. The Committee is now widely recognised both here and in the Community generally for its painstaking and non-partisan fact-finding approach to scrutiny. We consider that there will be a continuing need for selectivity to govern our work. Any undermining of the Committee's scrutiny work for example, by concentrating on topical issues at the expense of detailed scrutiny would be regrettable.

72. The Chairman's sift continues to be an effective first stage in the selection of topics for enquiry. We must avoid any risk of blurring the two distinct stages of sifting—the first, on grounds of importance, the second on grounds of Sub-Committee priorities including workload as well. We consider that Sub-Committee Chairmen could be consulted informally on occasion before the sift as to the significance of a particular proposal but that it would be impractical to make formal arrangements involving a large group of people. We recommend one formal change in the sift arrangements. Documents sifted to Sub-Committees with the purpose of keeping them informed rather than as potential subjects for enquiry should not be subject to the parliamentary reserve. There should therefore be a new category for them in the sift.

73. While letters can never form a substitute for the thorough fact-finding enquiries on which the Committee's reputation is based, ministerial letters have proved an effective method of expressing the Committee's views on fast-moving proposals raising a few specific issues. The practice should be continued.

74. We consider that enquiries on Commission Communications—the equivalent of Green or White Papers—is probably a useful means of solving the problem of timing associated with some important legislative proposals. Such enquiries need to be chosen and planned with care.

75. We hope that the Select Committee will continue to include discussions on Community matters of general interest as well as work on Sub-Committee draft reports. It should also discuss the Commission's Annual Programme at a meeting at the beginning of each year with a view to giving guidance to Sub-Committees on the choice and timing of enquiries.

76. The system of co-opting members with particular expertise for a particular enquiry has worked well. Indeed it would be advisable for additional co-options to be considered at the beginning of each enquiry not just occasionally as at present.

77. Although Sub-Committee loads still vary they all have sufficient work to justify a normal pattern of weekly meetings. We have considered in detail whether to reallocate Sub-Committee subject responsibilities. Our conclusion is that it would be unwise to do so at present, given the uncertainties as to the changing patterns of Community activity. The need for stability outweighs the need for increased flexibility and more *ad hoc* enquiries.

78. There is an overwhelming need for the Committee to use its staff resources to the best advantage. We agree in particular that the Clerks' load should be shared as fairly as possible to allow everyone to give of their best. We recommend that there should therefore be a management structure of one Clerk per Sub-Committee to ensure equal service for all Sub-Committees. In consequence the complement of career Clerks and temporary Clerks allocated to the Committee needs to be increased by one, to avoid a reduction by one in the number of Sub-Committees and a consequent reduction in the level of scrutiny.

79. On publication, we have noted the high cost of many of the Reports published on behalf of the House by HMSO. The practice of issuing slimline versions of the Report without evidence should therefore be continued alongside full reports. We also consider that in some cases the disadvantages of delayed publication outweigh the disadvantages of publishing the report separately from the evidence. A two-stage publication is justified when informing the House promptly is a paramount consideration.

80. We welcome the Government's undertaking to respond to all our reports. But responses in debates are unsatisfactory. We recommend that the Government should always respond to Reports in writing before the debate on them takes place.

81. We have considered the proposal that there should be a deadline of one month after publication for debates on the Committee's reports. We acknowledge that at peak times for legislation the rule might be hard to follow but support it as a desirable rule of thumb.

82. Such informal monitoring as has been done suggests that the Committee's reports may be influential at Community level. But we do not consider that a systematic follow-up would be useful. Our resources should continue to be devoted to the Committee's primary task of scrutinising Community proposals deposited in the House by departments at the beginning of Council negotiations.

83. Carefully planned visits can be most valuable to the Committee's work. We should continue to travel when the needs of specific enquiries justify it. More generally, the growing links between scrutiny committees mean that we should participate fully in the Conference of European Affairs Committees. Bilateral visits may occasionally be worthwhile. The Clerks' visits to the European Parliament should include trips to Brussels as well as Strasbourg. Similarly there are strong arguments for Chairmen of the Committee and the Sub-Committees to visit the Commission in Brussels as well as the European Parliament in Strasbourg from time to time. But the Committee should continue to ensure that all visits give value for money.

24 June 1991]

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## ANNEX A

## LIST SHOWING THE WORKLOAD OF THE COMMITTEE AND ITS SUB-COMMITTEES

## SIFT STATISTICS (BY CALENDAR YEAR)

	'90	'89	'88	'87	'86	'85	'84	'83	'82
Number of documents sifted A	586	605	610	652	773	563	456	551	537
Number of documents sifted B	283	282	250	192	139	115	211	187	224
<b>Total number of documents</b>	<b>869</b>	<b>887</b>	<b>860</b>	<b>844</b>	<b>912<sup>1</sup></b>	<b>678</b>	<b>667</b>	<b>738</b>	<b>761</b>
Number of documents reported <sup>2</sup> to the House	38	37	21	24	41	47	55	41	27

<sup>1</sup> Accession of Spain and Portugal?<sup>2</sup> Excluding letters to Ministers.

"A" Sift: Not requiring further scrutiny by Sub-Committees.

"B" Sift: Referred to Sub-Committees for further consideration.

## NUMBER OF REPORTS BY SUB-COMMITTEE (BY SESSION)

	1981-82	1985-86	1989-90
Select Committee		1	2
Sub-Committee A <sup>1</sup>	6	5	3
Sub-Committee B <sup>1</sup>	4	2	6
Sub-Committee C	4	3	5
Sub-Committee D	3	7	4
Sub-Committee E	1	4	3
Sub-Committee F <sup>1</sup>	3	2	3
<i>Ad Hoc</i> Sub-Committees			2
<b>Total</b>	<b>21</b>	<b>24</b>	<b>28</b>

<sup>1</sup> The Figures have been adjusted to fit the division of Sub-Committee responsibilities since the 1986 reorganisation.

## NUMBER OF CIRCULATED PAPERS CONSIDERED BY THE EUROPEAN COMMUNITIES COMMITTEE AND ITS SUB-COMMITTEES (BY SESSION)

	1981-82	1985-86	1989-90
Select Committee	68	119	127
Sub-Committee A <sup>1</sup>	267	75	162
Sub-Committee B <sup>1</sup>	260	107	219
Sub-Committee C	102	193	222
Sub-Committee D	245	312	241
Sub-Committee E	19	125	234
Sub-Committee F <sup>1</sup>	117	97	134
<i>Ad hoc</i> Sub-Committee on Uniform Electoral Procedure	9		
European Company Statute			58
<i>Ad hoc</i> Sub-Committee on Economic and Monetary Union and Political Union			113
<b>Total</b>	<b>1087</b>	<b>1028</b>	<b>1510</b>

<sup>1</sup> The figures have been adjusted to fit the division of Sub-Committee responsibilities since the 1986 reorganisation.



24 June 1991]

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## COMMUNITY DOCUMENTS CONSIDERED BY SUB-COMMITTEES (BY SESSION)

	1981–82	1985–86	1989–90
Sub-Committee A <sup>1</sup>	71	30	64
Sub-Committee B <sup>1</sup>	54	19	48
Sub-Committee C	20	19	33
Sub-Committee D	64	34	77
Sub-Committee E	12	18	63
Sub-Committee F <sup>1</sup>	17	10	27
<i>Ad hoc</i> Sub-Committee on Uniform Electoral Procedure	1		
<i>Ad hoc</i> Sub-Committee on European Company Statute			3
<i>Ad hoc</i> Sub-Committee on Economic and Monetary Union and Political Union			3

<sup>1</sup>The figures have been adjusted to fit the division of Sub-Committee responsibilities since the 1986 reorganisation.

## ANNEX B

EXTRACT FROM DEBATE ON RESEARCH AND DEVELOPMENT:  
ECC REPORT (28th JANUARY 1991)

Lord Shepherd rose to move, That this House takes note of the report of the European Communities Committee. *A Community Framework for R&D* (17th Report, 1989–90, HL Paper 66).

The noble Lord said: My Lords, no one would question the importance of research and development to the national well-being, or to the Community as a whole. Sub-Committee B decided it would undertake an inquiry into the Commission's proposals for the third Community framework for research and development. I trust that report has been helpful to the Government.

I wish to express appreciation to the Select Committee on Science and Technology for allowing three of its members to sit on Sub-Committee B. Those members provided a great deal of information and wisdom during our inquiry. I wish to mention in this regard the noble Lords, Lord Butterworth and Lord Sherfield, and the noble Baroness, Lady Lockwood. I also wish to express my appreciation to our specialist adviser, Professor Roger Williams of Manchester University, and to our clerk, Simon Burton. I hope that, having left that committee, he will find satisfaction in his new responsibilities.

I wish to thank in particular all the witnesses who provided us with the highest quality of evidence. The House is indebted to those witnesses for the information and evidence that they provided.

As I am no longer the chairman of Sub-Committee B, I hope I may say a few words about the quality of the reports that are produced by Select Committees and the way in which your Lordships' House treats them.

The report we are discussing was printed on 26th June—I hope noble Lords will listen to what I have to say. As I have said, the report was printed on 26th June of last year. It comes before the House on 28th January, some six months later. In December I was offered a debate on this report as the first item of business on this day. I do not object in any way to the nature of the business which has preceded this debate. Having been a chief whip some 26 years ago, I understand the difficulties and strains that are placed upon the chief whip in the ordering of business. However, I believe the position of this debate raises a question about what I would call the status of Select Committee reports.

The European Communities Committee has a duty to scrutinise all the proposals of the Commission. That is a heavy task. Taken at its easiest level, it requires a mass of reading to be undertaken. Some proposals can be cleared relatively quickly and the committee can offer rapid support for such measures. However, some of the Commission's proposals require an inquiry. Such an inquiry may last days and sometimes weeks. The proposal that we are discussing today required an inquiry that lasted for months.

The House should be indebted to noble Lords for the way in which they support Select Committees. However, the witnesses are the major contributors to reports. They not only give their time but they also involve themselves in considerable expense in the preparation of their evidence. It is also right to say that Select Committees incur the expenditure of considerable sums of public money. Not all the reports of Select Committees are submitted to your Lordships' House for debate. Only those that are considered by the Select Committee in question to be of major public importance are debated in this House.

24 June 1991]

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I suggest most strongly that Select Committee reports should be given a higher status in relation to discussion on the floor of the House. In a sense the reports are treated adversely when compared with Starred Questions. At least Questions are subject to a date which is a spur to government departments to reply to them. I hope that the Minister will convey my suggestions to the noble Lord the Leader of the House. I suggest that we should ask the Procedure Committee to establish a rule which would give these reports a higher status. I make two suggestions in that respect. First, I suggest that in the minutes of your Lordships' House there should be a separate heading for the reports. I believe that at present they are lost in the list of debates for which no day has yet been named. Secondly, and more importantly, the reports should be debated within one month of their publication. There is a duty placed upon our committee to scrutinise the Commission's proposals. If that scrutiny is to have any real effect on Ministers, a debate, if required, should be held at the earliest opportunity. It should not be held, as in the case of this report, some six months later.

### ANNEX C

#### MEMBERSHIP OF THE GROUP

L. Aldington  
 L. Allen of Abbeydale  
 L. Bridges  
 L. Middleton  
 L. Nathan  
 B. Serota (Chairman)

#### Membership of the Select Committee and Sub-Committees

##### SELECT COMMITTEE

Aldington, L.	Murray of Epping Forest, L.
Allen of Abbeydale, L.	Nathan, L.
Bridges, L.	Oliver of Aylmerton, L.
Carr of Hadley, L.	Peston, L.
David, B.	Renwick, L.
Elles, B.	Robson of Kiddington, B.
Ezra, L.	Serota, B. (Chairman)
Greenhill of Harrow, L.	Shepherd, L.
Hunter of Newington, L.	Somerset, D.
Lockwood, B.	Stedman, B.
Lucas of Chilworth, L.	Thurlow, L.
Middleton, L.	Young, B.

##### SUB-COMMITTEE A (Finance, Trade and Industry, and External Relations)

Aldington, L. (Chairman)  
 Carr of Hadley, L.  
 Peston, L.  
 Shepherd, L.  
 Thurlow, L.

##### Co-opted Members

Benson, L.  
 Boardman, L.  
 Buckinghamshire, E.  
 Camoys, L.  
 Dundee, E.  
 Jellicoe, E.  
 Kissin, L.  
 Limerick, E.  
 O'Brien of Lothbury, L.  
 Roll of Ipsden, L.



24 June 1991]

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## SUB-COMMITTEE B (Energy, Transport and Technology)

Ezra, L. (Chairman)  
Lucas of Chilworth, L.  
Renwick, L.

*Co-opted Members*

Geddes, L.  
Gorell, L.  
Gregson, L.  
Hanworth, V.  
Kearton, L.  
Llewelyn-Davies of Hastoe, B.  
Mersey, V.  
Varley, L.

## SUB-COMMITTEE C (Social and Consumer Affairs)

David, B.  
Hunter of Newington, L.  
Lockwood, B. (Chairman)

*Co-opted Members*

Birk, B.  
Bonham-Carter, L.  
Brain, L.  
Brigstocke, B.  
Flather, B.  
Hayter, L.  
Kinloss, Ly.  
Northbourne, L.  
Rochester, L.  
Swinfen, L.  
Turner of Camden, B.

## SUB-COMMITTEE D (Agriculture and Food)

Middleton, L. (Chairman)  
Somerset, D.

*Co-opted Members*

Boardman, L.  
Brookeborough, V.  
Carnegy of Lour, B.  
Carter, L.  
Elliot of Harwood, B.  
Mackie of Benshie, L.  
Plumb, L.  
Selborne, E.  
Stodart of Leaston, L.  
Walpole, L.

## SUB-COMMITTEE E (Law and Institutions)

Allen of Abbeydale, L.  
Elles, B.  
Oliver of Aylmerton, L. (Chairman)  
Robson of Kiddington, B.

*Co-opted Members*

Bruce of Donington, L.  
Hacking, L.  
Lowry, L.  
McGregor of Durris, L.  
Wilberforce, L.

## SUB-COMMITTEE F (Environment)

Bridges, L.  
Nathan, L. (Chairman)

*Co-opted Members*

Blyth, L.  
Borthwick, L.  
Gregson, L.  
Lewis of Newnham, L.  
McColl of Dulwich, L.  
McNair, L.  
Moran, L.  
Norrie, L.  
Soulsby of Swaffham Prior, L.  
Stedman, B.  
Warnock, B.  
White, B.

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### ORDERS OF REFERENCE (EUROPEAN COMMUNITIES COMMITTEE)

That the Committee or any Sub-Committee appointed by them have leave to confer and to meet concurrently with any Committee of the Commons on European Legislation etc or any Sub-Committee of that Committee for the purpose of deliberating and of examining witnesses; and have leave to agree with the Commons in the appointment of a Chairman for any such meeting.

### List of *Ad hoc* Sub-Committees

Sub-Committee on European Union: appointed 12 Feb 1985, report dated 23 July 1985.



24 June 1991]

[Continued

Sub-Committee on Staffing of Community Institutions: appointed 21 July 1987, report dated 29 March 1988.

Sub-Committee on Fraud against the European Community: appointed 15 March 1988, report dated 21 February 1989.

Sub-Committee on European Company Statute: appointed 5 December 1989, report dated 10 July 1990.

Sub-Committee on Economic and Monetary Union and Political Union: appointed 22 May 1990, report dated 30 October 1990.

#### List of Sub-Committees, 1990–91

Sub-Committee A	Finance, Trade and Industry and External Relations
Sub-Committee B	Energy, Transport and Technology
Sub-Committee C	Social and Consumer Affairs
Sub-Committee D	Agriculture and Food
Sub-Committee E	Law and Institutions
Sub-Committee F	Environment

#### ANNEX F

#### THE SELECT COMMITTEE ON EUROPEAN LEGISLATION IS APPOINTED UNDER STANDING ORDER No. 127, VIZ:

##### *Select Committee on European Legislation*

**127.**—(1) There shall be a select committee, to be called the Select Committee on European Legislation, to examine European Community Documents and—

- (a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- (b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 102 (European Standing Committees); and
- (c) to consider any issue arising upon any such document or group of documents.

The expression “European Community Documents” means—

- (i) any proposal under the Community treaties for legislation by the Council of Ministers;
- (ii) any document which is published for submission to the European Council or the Council of Ministers;
- (iii) any document (not falling within (ii) above) which is published by one Community institution for or with a view to submission to another Community institution and which does not relate exclusively to consideration of any proposal for legislation;
- (iv) any other document relating to European Community matters deposited in the House by a Minister of the Crown.

(2) The Committee shall consist of sixteen members.

(3) The Committee and any Sub-Committee appointed by it shall have the assistance of the Counsel to Mr Speaker.

(4) The Committee shall have the power to appoint specialist advisers for the purpose of particular enquiries, either to supply information which is not readily available or to elucidate matters of complexity within the Committee's order of reference.

(5) The Committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report from time to time.

(6) The quorum of the Committee shall be five.

24 June 1991]

[Continued]

(7) The Committee shall have power to appoint Sub-Committees and to refer to such Sub-Committees any of the matters referred to the Committee.

(8) Every such Sub-Committee shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; to adjourn from place to place; and to report to the Committee from time to time.

(9) The Committee shall have power to report from time to time the minutes of evidence taken before such Sub-Committees.

(10) The quorum of every such Sub-Committee shall be two.

(11) The Committee or any Sub-Committee appointed by it shall have leave to confer and to meet concurrently with any Committee of the Lords on the European Communities on any Sub-Committees of that Committee for the purpose of deliberating and of examining witnesses.

(12) Unless the House otherwise orders, each member nominated to the Committee shall continue to be a member of it for the remainder of the Parliament.

#### Examination of witness

BARONESS SEROTA, a Member of the House and Principal Deputy Chairman of Committees and Chairman of the European Communities Committee, examined.

#### Chairman

44. I welcome Lady Serota to our meeting this afternoon. I remember very well some of the discussions which followed the Maybray-King Report leading to the setting up of the Select Committee on the European Communities. At that time I did not have any idea that it would become *the* major select committee of this House. I am glad that it has won a very well deserved reputation within the House, Parliament, in the wider national scene and elsewhere, not least in Brussels and Strasbourg, in the European Commission and in the European Parliament. The evidence we have received from the three Lords MEPs has demonstrated that. That being so, I am very glad to welcome Lady Serota not only as the Principal Deputy Chairman of Committees but in this particular context as Chairman of the Select Committee on the European Communities. In doing so, I should also like to say how grateful we are for the full and comprehensive report on the workings of that Committee—a report which also looks to the future. I imagine you may want to say a few words by way of introduction.

A. My Lord Chairman, thank you for your kind words of welcome. I am pleased to take this opportunity of giving evidence to the Select Committee on the Committee Work of the House, though I must confess I find it a somewhat daunting experience. I would like to introduce Mrs Martin, Clerk of the Select Committee. Mrs Martin has been a member of staff of the House for some 10 years. Before that she spent five years in the European Parliament. That experience together with a remarkable facility in European languages means she is a great asset to the work of the Select Committee. In giving evidence perhaps I may first suggest that Members may find it useful, if they can spare the time, to visit the Select Committee or some of the sub-committees in the next few weeks or so. They might be particularly interested in the meeting on Thursday morning. At that time Sub-Committee E—currently carrying out an enquiry in the law-making

procedures of the Community in the context of the Inter-Governmental Conference proposals—will be receiving evidence from two MEPs: Sir Christopher Prout, Leader of the British Conservative MEPs, and Glyn Ford, Leader of the British Labour Group in the European Parliament. In addition, on 9 July, Bruce Millan, Vice-President of the Commission, is coming to give evidence to Sub-Committee A on regional policy. Both those occasions, and indeed many others which appear in the weekly list, might be of interest to Members so they can see at first hand how the scrutiny system operates. I understand that the immediate impetus for this enquiry was the report of the Clerk of the Parliament's to the Staff of the House Sub-Committee on the year's work. In that report he drew attention to the pressures of workload on the staff of the committee office which were preventing the House from setting up an *ad hoc* committee on sustainable development which I believe Lord Flowers had suggested. Perhaps I may say at the outset that the Select Committee share that concern. We set up a working group last October to review our working methods in the light of a number of changes which had taken place in recent years: the passing of the Single European Act; the Council's development of co-operation procedures with the European Parliament; the introduction of majority voting; the need to progress the package of measures in Lord Cockfield's plans for the completion of the single market by 1992; the changes in the Commons scrutiny procedures introduced last year; and above all the setting up in recent months of the two Inter-Governmental Conferences which will determine the future structure of the Community, certainly in the medium if not the long term. Together with all those changes come the political developments in Central and Eastern Europe. The ending of the cold war, negotiations with EFTA countries and negotiations on association agreements with Poland, Hungary and Czechoslovakia—which were debated in the House only three weeks ago—have all added to the current climate in which Europe has become a domestic issue. After the events of these last weeks I



24 June 1991]

BARONESS SEROTA

[Continued]

[Chairman *Contd*]

need hardly remind the Committee how topical the issue can be. That is the background against which we have been operating and why we felt there was a need to review our working methods. You will no doubt wish to ask a series of questions about all these issues, but I think I should stop at this point. I have sought to outline only the general background against which we have been working and the issues which we see as relevant to the future role of the Select Committee.

45. In opening the bowling I have very much in mind the high standing of your Committee in Parliament and elsewhere, particularly in the context of the very dramatic and fast-moving changes taking place in the whole European scene at the present time and the series of question marks hanging over it. Do I take it that as things stand now you are generally content with the role of the Committee, or are there any changes you would like to see happen? I know that the terms of reference are imposed on you, as it were. Are those terms of reference adequate as you see it and do they achieve the right balance in your scrutiny of the impact of proposals from the Community perspective and also from the domestic perspective? To interpolate one matter, I have seen some of the admirable reports emanating from the Select Committee, for example the one on rural society, which concentrate on the purely domestic scene albeit viewed in the European context. Given the pressure of time, one wonders whether that type of enquiry is as relevant as those on proposals which have a direct impact on the United Kingdom or an impact on the moulding of the Community as a whole. In general, would you say you are content with the terms of reference which the Committee presently has?

4. I hope I have said enough already to indicate that we are certainly not complacent about the role and function of the Select Committee. I take the view that any body that involves public expenditure has a duty constantly to consider what it is doing and where it is going. That does not mean that you are constantly tearing the plant up by the roots to see if it is growing. Nevertheless, from time to time it is appropriate that institutions and practices should be reviewed. The Select Committee has operated within its present terms of reference for the past 17 years. We are full of admiration for the architects of the system. I only wish we could look as far forward today as they did 17 years ago. I find that a very difficult exercise in view of all the imponderables already mentioned. The terms of reference which are extremely broad have served us well. They have enabled the Select Committee to operate extremely flexibly and adapt to the changing situation within the Community. On the type of reports produced, the question is more difficult to answer. Inevitably, given the large number of proposals which come before us and our prime task is pre-legislative scrutiny, we have to be selective. Quite apart from the speed at which decision-making in the Community is now moving, I submit it would be quite impossible for any committee of either House to examine every proposal thoroughly. We are selective and always have been so. The question of the balance between the United

Kingdom and Community perspective is quite difficult. In the first place, no sub-committee considers any proposal unless it has come through the sift. It is not a question of plucking topics out of the air which particular Members of the Sub-Committee would like to make the subject of enquiries. The terms of reference are specific. You mentioned the report on the Future of Rural Society which stemmed from a Commission Green Paper and ranged over all the issues affecting the different member states. Sub-Committee D, which conducted that enquiry, was concerned at its great breadth and decided to concentrate its resources and thinking on certain United Kingdom aspects because that was where its expertise lay. In the event, it was a very useful report and happened to precede their current enquiry (which I hope they will finish by the time we rise for the summer recess) into the reform of the Common Agricultural Policy. In that context, there are proposals by Commissioner MacSharry which it is no secret to say our Sub-Committee does not favour. Nevertheless, they are examining them and hope to propose some constructive alternatives in the light of their knowledge and experience. I personally think that the previous enquiry into the Future of Rural Society has formed a good basis for that enquiry. The continuity of the Select Committee's work brings some of the advantages from which we are now benefiting.

46. How do you see the thrust of the Committee's output being directed? In your view, is it mainly towards Ministers and the Government? To what extent is it also directed to the European Commission and European Parliament? It is my impression from what I have read, not least from MEPs but more generally, that your Select Committee stands very high in the regard of the European Parliament, the Commission and other national scrutiny committees. I would very much like to know where you see the main thrust and to what extent you feel you can measure the impact of the work of the Select Committee?

4. I am sure that the main thrust is the duty we have to report to the House on any matters of policy or principle of which we think they should be aware. It is through the House that we seek to influence Ministers' decisions when they meet in the Council of Ministers. The first thrust must surely be at our own Government. Indeed, one of the reasons why we have recently developed the system of letters to Ministers, which are published every six months, is to deal with those issues on which there is insufficient time—and perhaps insufficient need—to conduct a full-scale enquiry. There may be aspects of proposals coming before the Council of Ministers, whether they be related to *vires* or specific proposals affecting industry or social policy, where we feel Ministers should be aware of the views of the Select Committee—hence the considerable number of letters to Ministers which then go into the public domain. That is our first objective, and I think it is the right one. We are a House of the British Parliament and it is to the British Parliament that our Ministers are accountable and responsible. As you say, it seems that the reports go far wider than that. I must confess



24 June 1991]

BARONESS SEROTA

[Continued]

[Chairman *Contd*]

I was somewhat surprised to learn that a set of our conclusions and recommendations, of which there were many, following the *ad hoc* enquiry into Fraud against the Community were translated into Italian and circulated to the Italian Senate. We know that the reports are read in the Commission and in the European Parliament; and they are also read by interested bodies and organisations, either those who have given evidence or those who are concerned with the proposals. I think the influence can go wider but it is very difficult to measure it. After all, we do not know whether what we have said has really caused a decision to go one way rather than the other. I could give you specific examples of proposals—certainly the campaign against Fraud in the Community and other issues—where specific changes have been made. But in terms of general influence the thrust is first to our Government and the House and then the wider Community insofar as it is relevant to the specific issues they are considering.

Lord Pym

47. I should like to put two questions. First, on the workload of the Select Committee, for this purpose we cannot anticipate changes which may take place in the next year or two; we have to look at things as they are at the moment. You yourself indicated that you sift all the material and some of it cannot be examined. Nevertheless, between all the sub-committees a vast amount of ground is covered. Can you envisage that by being more severe in the sifting process you could reduce the workload of the Committee by confining it to the principal areas of concern or interest, or do you think it is inevitable given the way things are going that the workload is going to increase and to fulfil your remit you ought if anything to look at more material rather than less?

A. The basic principle on which the sift is conducted every Monday morning is to consider which of the proposals deposited with the Council and submitted to us by our Government with Explanatory Memoranda have legal, financial or policy implications. Those are the three tests which I apply and the three areas which the Government memoranda cover, together with the legal base of the proposals. Under the present system it is then for the Sub-Committees to decide whether or not to continue to examine the proposals. I try to attend all the Sub-Committees, particularly when they are considering their future work programmes and draft reports. But in the last resort it is always a matter of judgment. There are some topics, like municipal waste water treatment which was mentioned by the Clerk of the Parliaments last week, which to some people would be a dull and unimportant subject. However, as the Sub-Committee point out in their opening paragraph, this is a subject which many would like to deal with on the "out of sight, out of mind" principle. But the proposals were extremely wide-ranging and could cost in this country some £8 billion to apply. As was pointed out in the report, that would represent something like £141 per head of population; and they also involve public health and

other related issues. That was a topic which Sub-Committee F felt was sufficiently important to examine in depth. When the working group considered the sift system, it was suggested that the sub-committee Chairmen should be more closely involved in decisions about what issues should go for further scrutiny to the sub-committees. I personally would welcome that, provided we can do it in sufficient time because these things have to move quickly; otherwise, the whole system would become jammed. We have also suggested to the Select Committee—and they have agreed—that it should itself play a more active part in the choice of proposals and the priority given to them by considering the Commission's annual work programme every year. I can think of other occasions when the same process should apply. The answer is that we probably could improve the sifting process. The only difficulty is that I cannot promise it would produce less enquiries rather than more; it could work the other way round.

48. The results of your work and reports are widely understood and read in the world of European politics. Indeed, they are much admired in this House. Are you satisfied with the dissemination of your reports and the conclusion of your deliberations in Parliament and this country where the interest is not quite so keen as it obviously is in the world of European politics? Do you feel that perhaps somehow other Peers and Members of Parliament ought to be more aware of the conclusions you reach, in addition to the reception of your reports by the Government?

A. I am sure there is a need to raise the general level of knowledge and awareness in this country about matters European. With regard to the House, we now come to the vexed question of debates and the time devoted to them. There are difficulties here. In the first three years of the life of this Parliament the Government's legislative programme was such that it was virtually impossible to get time for a debate between the Easter recess and when the House rose for the summer recess, for reasons which we all fully understand. As Lord Kearton will know from his experience as Chairman of Sub-Committee A, it is possible sometimes to get a number of debates either in the spill-over when we are filling in time and waiting for the Commons or in the early days of the session when legislation is not ready and we are moving into January and February. There are also problems about timing. I am glad to say that the Standing Orders of the House have been changed and our reports can come as first business, but when we recently had a debate on a Monday on the report of Lord Aldington's Sub-Committee on agreements with Poland, Hungary and Czechoslovakia, which was due to be first business, something else was slipped in first. There followed a statement, and the debate did not start until twenty to six—much to the annoyance of those Peers who wished to participate. I think one has to accept that the problem of how to make the reports more widely available is a difficult one. Academic institutions use them for teaching and library purposes. Interested organisations use them. However, I must confess that at times they are pretty



24 June 1991]

BARONESS SEROTA

[Continued]

[Lord Pym *Contd*]

heavy reading. Short of doing a quick summary type of document, I do not think they are always very readable unless one is closely interested in and affected by the subject.

*Chairman*

49. Following up the question of the consideration by the House of your reports, if I recall correctly you have suggested in a report following a proposal made by Lord Shepherd that in general it should be the aim of government to give a written reply to reports within a month. Thinking back to the remote days when I was a Minister—and the even more remote days when I was a civil servant in the Foreign Office—it struck me that perhaps that would be a very tight time frame. That said, I myself have considerable sympathy with the idea that there should be a pretty quick written reply. I was also intrigued by a proposal of the Science and Technology Committee of which I have received some intimation, which we will probably be discussing next week, that perhaps three Wednesdays in a session might be set aside for consideration of Select Committee reports, quite apart from fitting them in wherever possible. Would you have any comments on those two areas?

A. One cannot help but agree that a month is a tight timetable but one has to establish some kind of rule of thumb. Some of the delays have been quite unacceptable. After all, government is aware of the enquiry; it normally gives evidence and sometimes government representatives are seen in the public gallery listening to the evidence. So the report cannot come as a surprise. We see the need to set a reasonable time limit between the issuing of the report and the government reply. The government reply should come before the debate; otherwise, it is not really a debate.

50. I think the Select Committee on Science and Technology will be suggesting that three Wednesdays per session should be devoted to such debates?

A. We move into very dangerous waters because Wednesdays have been set aside for back benchers' debates. I foresee all sorts of problems in the House if those privileges were removed. However, these are matters of considerable importance, and I would have thought it possible to set aside a reasonable number of days to consider reports to which so much time and thought has been given. Much will depend on the subject-matter. Clearly, a major subject like economic, monetary and political union will interest a larger number of Members of the House. We have tried other possibilities. I think two reports of a specific nature have recently been debated in the dinner hour. On one occasion it worked and on the other it did not. There is also the possibility of using unstarred questions on occasions to draw the attention of the House to matters which we consider to be important or still outstanding. Provided the business is not too long, an unstarred question can focus attention on a fairly small range of specific issues—and sometimes that is all we really need—resulting from a report to the House. As to the major debates, I would like to see some Wednesdays being

devoted to such debates, but there are other ways in which the House can take note of and debate these reports which we should consider.

*Lord Dormand of Easington*

51. I would like to ask about what Lady Serota has described as shortened versions of reports, to which she has given the splendid name "slimline". I place quite considerable importance on it. I wonder how many people have my experience of such reports. I get the daily list and the reports are put on my desk. Within seven days there may be three reports on my desk and I have not started the first one. Lady Serota may be wrong in saying they are heavy going. They contain so much good stuff that one would like to read the whole thing. Arising from that, one can read a shortened version which in itself will give an overall picture of what the report is about. In addition, one can dig out perhaps some part of the report which is of particular interest to the Member and then go back to the full report to get more details from it. Lady Serota also says in her paper that two-stage publication is justified when informing the House promptly is a paramount consideration. For all those reasons, perhaps the Committee may consider increasing the number of slimline reports in order to give a quicker and perhaps fuller picture than it does at the moment.

A. On every occasion that a report comes before the Select Committee we consider whether the report should be published with the evidence or whether a slimline version should be published. Sometimes it is a matter of urgency; sometimes it is a matter of cost. As I indicated in my covering letter, we are concerned about the cost of the reports. Cost reduces the ability of some organisations and members of the public to buy these reports. I have here the slimline version of the municipal waste water treatment report which is not quite as formidable as the thick report containing all the evidence. This resulted from a suggestion which I recall Lord Nathan made a number of years ago and it has worked very successfully. But the slimline version still costs £11.65, which is quite a lot of money.

*Chairman*

52. Some of the non-slimline reports are very "non-slimline". There are some statistics showing that some 15 years ago there were 35 reports each of which had on average 29 paragraphs, whereas last year there were 26 reports each of which had an average of 94 paragraphs. I do not know whether or not those statistics are right, but they show a trend. Is there a possibility not only of producing the full report and the slimline but also the full report perhaps being more slimline itself?

A. In a sense I suppose we are the victims of our own success. One of the problems is that a lot of people offer to give evidence uninvited. I do not think that the figures you gave included all the matters now dealt with in letters to Ministers which are very short; some have only four or five paragraphs. There is a natural tendency, particularly on the part of those Peers with special knowledge and experience, to try



24 June 1991]

BARONESS SEROTA

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[Chairman *Contd*]

to deal with all the issues which arise from any proposal. In one sense it is a wish to do the job properly so it is a question of self-restraint; I personally would very much regret any reduction in the quality of the enquiries which the Select Committee conducts. One of the problems with the speed of decision-making in the Community is to retain that quality but still hit the target in time. The reports have undoubtedly lengthened, unless one brings into the calculation the letters to Ministers; but the proposals are also far more complex. If one thinks of some of the proposals which have come before the Committee in relation to the completion of the single market, they are not matters which can be dealt with in a few paragraphs.

*Lord Kearton*

53. In a way, I would like to make comments and then ask questions. We ought perhaps to categorise the reports because they vary enormously in their impact and also in their provenance. I give one or two examples. A few years ago we got a very strong hint that the European Court of Justice would like to be looked at with a view to making recommendations about the carrying out of their functions. We reviewed it and came to the conclusion that the European Court of Justice ought to have a court of first instance. In a year or two that was adopted as part of the policy. In a way, the Committee was used by Brussels or the European Court of Justice for lobby purposes. I think people have forgotten that when Lord Cockfield introduced his White Paper on making a reality of the Common Market in 1992 it was an immensely ambitious undertaking and a massive number of points of principle had to be decided, but how to make progress was rather difficult. The Committee looked at a matter which Brussels and our own Government regarded as something of a technicality. One of the Cockfield reforms was that standards in one country should be accepted by another and you did not have to aim for across-the-board Community standards which until then had been the case and had made progress very slow. We were asked to look into what seemed a very technical matter: the specification of pressure vessels. Pressure vessels are used in all sorts of things, like air compressors and so on. When it was looked into it was discovered that the specifications were different in all countries engaged in that particular trade. When one comes to the question of what one is aiming for, that enquiry has been seized on as being what you might call the catalyst and has been adopted by our own country and others as a blue print for the future so that the Cockfield reforms can progress more quickly. Some years ago there was a lot of heat generated over the question whether one could get minerals out of the deep sea bed, to whom they belonged and all the rest of it. We carried out a very comprehensive report—it was almost the same as a royal commission—and we came to the conclusion that the problem did not exist. There was such an enormous supply of much cheaper minerals on the land surface which would last for donkey's years without having to get excited or worried about

the mining of the sea bed. To some extent we put that issue to bed and the Government accepted the recommendations. If you have reports which really bring up broad areas of policy the question arises as to how to get the Government to respond to them. My own experience was that on certain matters Sir Geoffrey Howe would have a look at the report and write back to say he had read it and he would make various suggestions, comments and point out disagreement. In some way we got a more useful exchange from the Minister in that way than by bringing it before the House. What I am trying to bring out is that there are different categories of reports. Some are very important in terms of principle; some are very important from the point of view of this country; and some in a sense are rather technical. My impression of the work of the Committee over the years is of the enormous competence within the Committee itself and recognition by people outside of the value of that work. I would like to see a situation where the Committee is using much more of its own judgment about what comes forward for discussion so that very serious discussion can take place. But I do not think it should be examining relatively minor technical or administrative matters; it should confine itself to very major issues of principle, such as Lord Aldington's report on Economic, Monetary and Political Union.

A. The Select Committee decides whether or not the reports will be made for information. It may be we get the balance wrong. It is open to the Select Committee to recommend either course. Certainly the ones which are more technical are inclined to go for information. But again it is a matter of judgment. Only quite recently Sub-Committee E produced a report on External Aviation relations—a subject which I found extremely complex. To my amazement, the Select Committee decided it was a matter of such public importance that it should go before the House for debate. In the last resort it is a matter of judgment, but the options do exist.

*Lord Boston of Faversham*

54. In relation to the response of Ministers, I would like to set on one side the suggested written response within a period of one month and return to the oral responses in the House. In the paper Lady Serota has submitted she makes the point, with which many of us would sympathise, that it is often frustrating to have ministerial responses at the end of a debate. This afternoon she has made the suggestion of using unstarred questions. One can see that that would be useful on occasions, although it would automatically mean that the response would be at the end of that particular type of debate. As to debates on reports in normal circumstances, I am wondering whether Lady Serota has given any consideration to having the ministerial response towards the beginning, perhaps after the report has been presented, followed by a further ministerial reply, picking up points which Members have made during the course of the debate. It is very frustrating to find one's point not being responded to in that way. It



24 June 1991]

BARONESS SEROTA

[Continued]

[Lord Boston of Faversham *Contd*]

would not be without precedent to have two ministerial statements in the course of a debate.

A. That particular suggestion is one the Select Committee has not considered. We have really put our faith in the written response of the Government before the debate takes place so that Peers are aware of the views of the Government and the debate can then proceed. Referring to Lord Boston's suggestion that the Government speaks twice, that is a matter for government. We know that in long debates it sometimes happens. I cannot recall it happening on a debate on EEC matters.

*Lord Bancroft*

55. We know of the extremely high reputation of the work of the Committee and its powerful influence on Brussels. We know that in terms of other European countries that are members of the Community the work of the Committee is outstanding. Equally, we devote to the work of the Committee a very large proportion of Lords' time and over one-quarter of the clerk power of the House. If your suggestion that there should be an extra clerk is agreed to, the proportion will rise to nearly one-third of clerks' time. All of that is on one side of the equation. On the other side, if we look at the amount of time that the House devotes to debating the reports of the Committee we find that last year it was 3.2 per cent. We learn from Lady Serota's evidence that one can perhaps cram a debate into the dinner hour or an unstarred question. The paradox I find very baffling is that on the one hand we have the way in which the Committee by its own efficiency has levered itself into a position of very great influence and repute and yet on the other hand the amount of time devoted to debating its labours on the floor of the House and the effect it has on our own Ministers and Government seems much smaller than would correspond to the amount of resources devoted to it and the influence which it has outside this country.

A. I understand Lord Bancroft's point. Ultimately, it is a matter for the House to decide. It is a question of where the House wishes to put its resources both in Peer and staff time. As far as Peers are concerned, this is a voluntary activity. It attracts Peers with special knowledge and experience in particular areas of Community activity. It also attracts Peers who, because of other commitments, find it difficult to sit through long legislative sessions in the House, sometimes running on until late at night, but are prepared to serve on a committee when its programme is known in advance: for example, Sub-Committee A meets on Tuesday mornings at 10.45. It is possible to put that into a diary. It also attracts a number of new Peers who perhaps at the beginning feel a little lost in a large assembly and find it easier to focus their activities on the work of a select committee, be it Science and Technology or the European Communities. What is more difficult is staff time. At present, the work of the European Communities Committee absorbs the attention of our chief clerk, Mrs Martin, and four clerks together with their supporting staff. We also have the benefit

of advice from our Legal Adviser and her legal assistant. There are a number of ways in which the Committee may care to consider possible changes. As Lord Bancroft has rightly said, in our working group we came to the conclusion that the work stemming from the proposals coming before the Committee, not work taken on for any other reason, was such that a sub-committee clerk could effectively deal only with the work of one sub-committee at a time. At present, we have six standing sub-committees, one of which is Sub-Committee E on EC law and institutions. The clerk of that Sub-Committee can serve another sub-committee because the legal adviser and her assistant undertake much of the work. But in our view the other five sub-committees each require the attention of one clerk. I mentioned earlier the present enquiry which Sub-Committee D was conducting into the reform of the Common Agricultural Policy. In order to do that we have had to put the work of Sub-Committee F (Environment) into suspense because with the best will in the world it would be impossible to serve both sub-committees. Part of the problem is that they now meet more frequently. (At one time sub-committees generally met once a fortnight.) This is a reflection of the speed of decision-making and how it has changed within the Community. If we are to deal with fast-moving proposals in sufficient time to get our views across to government, the sub-committees have to meet weekly. My answer is that in the last resort it is a matter for the House. I am sure the Committee will wish to consider the possible alternative ways in which part of this work can be undertaken.

56. One way of looking at it, which is a very simple way, would be to say that either the Committee has got it right in devoting the present amount of resources to the work—and certainly the high reputation it enjoys in Brussels and elsewhere suggests that that may well be the case—or that given the exiguous time which the House itself spends in debating the reports and the somewhat cavalier way in which Ministers occasionally treat such reports, because they take an awfully long time to reply or because they simply produce an anodyne statement at the end of the debate, we are devoting too many resources to it. The thrust of some of the oral evidence we got from the Clerk of the Parliaments and the Reading Clerk last week was that one should perhaps look to a fairly drastic reduction in the number of sub-committees, coupled with winning more time on the floor of the House for debating and taking on more seriously these enormously influential reports?

A. Once again, it is a matter of judgment. It is interesting to note that the House of Commons scrutiny system, which was initiated at the same time as the House of Lords system, though with different terms of reference, has put its main weight into debates on the Floor of the House or now in Standing Committee. Their Select Committee on European Legislation meets once a week. It goes through all the proposals deposited in the Council, just as I do on Monday morning. It does not consider the merits of the proposals; in the main it does not call for further information, although sometimes information is



24 June 1991]

BARONESS SEROTA

[Continued]

[Lord Bancroft *Contd*]

sought from Ministers. But it does refer to the House for debate those proposals which have legal or political significance. Those debates regularly used to take place after ten o'clock at night with the Minister replying. There was dissatisfaction with that emphasis on debates on the Floor of the House to the point where Sir Peter Emery's Committee on Procedure reporting two years ago suggested that there should be a closer examination by the House of Commons of some of the proposals. As a result, this year the House of Commons has set up two Standing Committees, A and B, to whom they refer matters which require further consideration and debate. Standing Committees A and B, which I think have been meeting in the current session, see Ministers but not other witnesses. Sir Peter Emery originally suggested they should have five such Standing Committees. I gather there were, amongst other matters, problems of manning that number, but in any event they are somewhat over-burdened, as one can well imagine, by the volume of proposals. It remains to be seen how the new system will work through in the light of all the changes which have taken place. The Select Committee on European Legislation in the Commons is served by a deputy principal clerk, Dr Christopher Ward, and three advisers who are normally retired civil servants. Presumably, the two Standing Committees are also served by clerks. In our House, we have a chief clerk and four other clerks to handle the present volume of work. I make no comparisons but simply say that if one is to put one's faith in more debates in the House it is interesting to note the experience of the House of Commons in that respect. On the question of having a reduced number of sub-committees, that was an issue which the working group looked at and gave very careful thought to. There are a number of options here. In the first place, the House could decide whether after 17 years of working we should perhaps discontinue our scrutiny system. That possibility could be considered, although I suspect it would come at a rather awkward time when our Government is suggesting there should be a Declaration attached to the Treaty that the role of national parliaments should be strengthened and they should be entitled to see all papers deposited with the Council in Brussels, that they should develop their scrutiny systems and should develop better relationships between national parliament Members and European Parliament Members. But one could argue that this House should discontinue the scrutiny of EC proposals at this stage. One could also envisage, if it was agreed that the work should be restricted and reduced, a select committee which had the present terms of reference of Sub-Committee E (Law and Institutions). That sub-committee up to now has been chaired by a law lord and examines under specific terms of reference aspects of proposals submitted to the Council as they affect UK law, questions of *vires* and all the other issues that they deal with so admirably. Their specific terms of reference are listed on page 15 of our report. A select committee working with one clerk and our legal adviser and assistant could undertake that work, thereby reducing considerably both the time and staff

resources spent on scrutiny work. The proposal we considered in the working group was that we should reduce our sub-committees from six to three with one standing sub-committee being responsible for *ad hoc* enquiries, making a total of four. Therefore, those four sub-committees would have to subsume the work of Sub-Committee E, with the legal adviser advising them all. We would have four committees and presumably four clerks, which is what we have now, though it does not meet Lord Bancroft's point about reducing staff resources. As we said in our working group report, in view of all the major changes now impending in relation to the future structure of the Community it would be unwise to upheave the whole system until we can see more clearly what changes are likely to occur. The changes which we set out in the report which could well affect the work of scrutiny—and undoubtedly will do so—are the ones listed in paragraph 20 on page 7. The first matter is the extension of competence. We list in paragraph 21 all the different subjects which have been suggested. I do not know at the moment whether all of them will finally emerge in the treaty but we know some will. That will certainly raise issues of constitutional significance that the Select Committee or the House will have to decide upon. Broadening of competence will certainly affect the work of scrutiny. We then considered how the principle of subsidiarity is dealt with in the treaty. The Select Committee in the EMPU enquiry recommended that the principle of subsidiarity should appear in the preamble to the treaty but should not be justiciable. I think events have gone beyond that. As we read the Luxembourg Presidency's draft Treaty it includes a draft Article clearly writing the principle into the body of the treaty for the first time as a general principle. Again, I think that will affect the amount and level that national parliaments will need to devote to Scrutiny. We have described of the effect of increased competence, majority voting and the co-operation procedure. The introduction of co-decision as between the Council of Ministers and European Parliament, which our Committee and, the Government were opposed to, would again have a major effect on scrutiny by national parliaments. It would move the centre of decision-making away from where it presently lies, namely, entirely in the Council itself. That is presently the legislative body of the Community. We do not know whether there will be any changes of that kind. It was for all those reasons that we felt this was not the moment to change our sub-committee structure and allocation of subjects. I can assure the Committee that this is not because we are opposed to change. I know some people find change difficult. There was no problem in the Select Committee when I suggested we should review the present procedures and practices, partly because of the case load and partly because of the changes which had already happened and to which we needed to adjust. There is a fourth factor which I believe will affect scrutiny in future, although one cannot tell whether it will come about. I refer to the current discussion and negotiation included in the Inter-Governmental Conferences about what is now



24 June 1991]

BARONESS SEROTA

[Continued

[Lord Bancroft *Contd*]

known as the future architecture of the Community. The three pillar system, which I believe is favoured by our Government, envisages a situation where you have the present EC as one pillar; the second pillar would be foreign affairs, security and defence; and the third would be home affairs (drugs, guns etc) and judicial affairs. Presumably, the first pillar would be established through an amended treaty. At the moment, I certainly do not know whether the other two pillars would be the subject of treaties or agreements. In any event, this is a possible structure. Not all Member States agree with it; indeed, some are very opposed to it. They want to see a unified system. Our Government favours the pillar structure. If that structure came about one would need to look at our scrutiny procedures in the light of and against that pattern. That is why the Select Committee has decided, not because it does not wish to see change but because of all the uncertainties surrounding the current situation, that this is not the time for change. We should certainly wait until we have seen the outcome of the Inter-Governmental Conferences and look a little further forward. We cannot look too far forward because, after all, there are already several countries knocking at the door of the Community including Sweden and Austria. There are one or two others in the wings. Personally, I find it very difficult to see a Community with 15-18 members structured as at present. Perhaps that is looking too far ahead. But at least we felt we should wait until we see the outcome of the Inter-Governmental Conferences before the present system is changed with all that that would mean.

*Lord Thurlow*

57. I should like to ask Lady Serota whether in the light of her judgment about the difficulty of addressing the question of the two new pillars (if they are to be built) by the Select Committee before we know what is going to happen qualifies what the report says at the end of paragraph 69 about the possible investigation by this particular Committee on the Work of Committees which, as I see it, would be confronted by the same kind of difficulties.

A. The real difficulty is that everything is changing so much at the moment. We can hardly keep up with it day to day. That is the difficulty in trying to see ahead. I think it would be a matter for the House if the three pillar structure were to come about. It would undoubtedly affect the present terms of reference; they would need to be reconsidered in the light of the changes which presumably would take place in the Community. We sought to draw attention to the issues because they are of great constitutional significance.

58. I suppose that as the months go on we shall get through various channels indications of the possible shape of what may eventually emerge—something rather intangible but nevertheless a little to go on for the moment?

A. We hope that December will reveal all.

*Lord Kearton*

59. The more I hear Lady Serota expound on the point the more it seems to me that “scrutiny” is an inadequate word. It is much more than scrutiny; it is very deep consideration by the Committee of both general and detailed issues.

A. We are not a foreign affairs committee. I constantly stress to my colleagues that we are there to examine proposals. We are a reactive committee.

60. But it is done in great depth?

A. On a limited range of issues.

61. The other thing touched on earlier is that the impression one has is that the Committee has more influence in Brussels and amongst the various commissioners and directorates from M Delors downwards. I mentioned the European Court of Justice. I remember very well a report done on the Court of Auditors, as a result of which it was decided that the Court of Auditors should have direct access to the Council of Ministers to enable the Court of Auditors to make their points at that level. Why does it not have the same weight with government Ministers that it has in Brussels and the Commission?

A. I think that is a question to be asked of government Ministers. In fairness, I must say I think that perhaps some government Ministers are more sensitive to our findings than others.

62. To give an example, for years the agriculture sub-committee pointed out the folly of the CAP in the most striking manner. That went on and on and on to the point where the policy became most discredited and yet the Government did not take any action in the face of these marvellous reports prepared by a number of people over several years. Why was that?

A. Perhaps because it was then in a minority of one.

Lord Kearton] But if more resources are being called for one has to be satisfied that the Committee has some impact on these matters.

*Lord Thurlow*

63. Arising out of what Lady Serota said about the possibility of having not only slimline reports but a very much more summary-type reports on top of the existing arrangements, obviously nobody would want to suggest the production of additional documents without some consideration being given to the necessary resources. One of the difficulties about getting wider consideration in this country of the reports, some of which have a rather off-putting specialised look about them, is that there is not an easily graspable document available to show what is being talked about and what the Select Committee is suggesting. Is there any conceivable point in considering the appointment of an information officer for the Select Committee with the specific function of producing popular versions of reports in which the press might take an interest? You have probably considered all of this before. One of the things that troubles me about the impact of our reports given their quality is the lack of interest in them on the part of the press. They blink at the nature of some of these specialised reports.

[Lord Thurlow *Contd*]

A. I do not recall the Select Committee having considered the production of popular versions. As I said earlier in answer to Lord Dormand's question, we adopted the practice of issuing slimline reports, but I recognise that they are not popular versions. On some occasions we issue press notices and also hold press conferences. Some reports are well reported in the press, though not in the tabloids. The Fraud report was also reported in the tabloids. However, in general reports are not reported in the tabloids and the popular press, if one regards the tabloids as "popular". We have not done that, and I can only say that if we did it would require additional resources.

Lord Kearton] I strongly support and entirely agree with Lord Thurlow's question. One of the great weaknesses of our present system is that it has no adequate publicity machine.

*Lord Pym*

64. The House of Commons have their own methods. They are not as broad, fundamental or far-reaching as the work of the Committee of this House over which Lady Serota presides. Do you think the Commons take adequate notice and account of your reports as far as you are aware, or do they prefer to set them slightly on one side and simply conduct their own enquiries on the basis you have described? If so, would you not think it perhaps a little bit wasteful that all the work done in this House is not taken more advantage of in the Commons?

A. I am not sure I can answer Lord Pym's question. I do not know how much individual Members of the House of Commons read our reports. On occasion they comment upon them. Through the staff of our committee and the staff of the Commons committee we keep in touch with developments on both sides. We seek to avoid any overlap of enquiries. We take note of Commons reports. The situation in the Commons is rather more complicated in that the departmental select committees of the Commons from time to time do enquire into Community matters. We are aware of those reports and take them into account. For example, if a House of Commons committee has conducted an enquiry into a particular topic we do not undertake one, and I presume they do likewise.

*Chairman*

65. On the question of resources, I was very interested in the very full reply you gave to Lord Bancroft's question. I want to put two pedestrian questions. First, you talked about the review you conducted of the sub-committee structure. What flowed from the evidence of the Reading Clerk last week was the suggestion that it might be possible and useful to combine the agriculture and food sub-committee with the environment sub-committee. My second question is whether the Select Committee is perhaps a little uneconomic in one respect with its use of the Peer resource. There are some 24 Members of the Select Committee itself. The main task of the Select Committee is to approve sub-committee reports, although I have read about other activities of

the Select Committee itself. I recognise that many of the 24 Members are actively involved in the sub-committee work of the Select Committee. I would welcome your comments on those two points.

A. On the question of the combination of subjects along the lines of the Reading Clerk's evidence to you last week, the proposals we considered in the working group were not quite those of Mr Hayter who suggested that agriculture and environment should go together. It would have to be wider than that. The proposals we considered were that Sub-Committee A would deal with external relations and finance and Sub-Committee B would deal with all the measures involving the development of the single market. Sub-Committee C would deal with natural resources and consumer policy. The fourth sub-committee would be the permanent standing *ad hoc* body to deal with proposals that crossed the frontiers of the subject divisions. However, if one accepts the thesis that one requires one clerk per sub-committee—and in my view such a range of topics would do so—it would still mean the same four clerks we have at the moment. On the question of the size of the Select Committee, the committee is appointed by the House on the recommendation of the Committee of Selection. It broadly reflects the different opinions within the House. It is a large committee, and presumably it was so designed to enable Peers sitting on the committee to serve on the sub-committees. The majority of those Peers do so. There are one or two who do not for a range of reasons, partly because their service is affected by commitments outside. But you will see from the list that one or two Members of the Select Committee serve on each Sub-Committee. This is a very valuable connecting link. It would be open to the House through the Committee of Selection to reduce the size. I presume that it was because of its representative nature that that size was decided upon when it was set up.

*Lord Boston of Faversham*

66. First, on the question of the influence of the reports on our own Ministers, I very much agree with what Lord Kearton and Lord Thurlow have had to say. As Lady Serota has indicated, it is difficult to get to grips with exactly how much influence the Committee's reports have had on Ministers. As she has very fairly and characteristically modestly said, it is difficult to know what are the influences which have led Ministers to make certain decisions, whether it has been the influence of the reports of the committee or whether they would have come to their decisions of their own volition or as a result of outside influences. Perhaps Lady Serota is right in saying that this is something to be addressed to the Leader of the House or the Government itself. But one's impression is that such is the influence outside the committee that it has also had significant influence on our own Ministers as well. One can think of some of the reports of Sub-Committee E when government departments have awaited the views of that sub-committee on particular legislative proposals from the European Community before coming to a decision. I am wondering whether there is some way



24 June 1991]

BARONESS SEROTA

[Continued]

[Lord Boston of Faversham *Contd*]

over the next few weeks of pinning down more precisely just what influence these reports have had on Ministers. I know it will be difficult to do that for the reasons given, but I am wondering whether a look back at earlier reports—and perhaps it might be too vast a task—would show those subjects on which the Government have come to decisions in line with recommendations of the committee in various of its reports. As Lady Serota has indicated in her evidence this afternoon, this is where the main thrust of the Committee's work lies through the House and to our own Ministers. If we can pin down in some way, even if not absolutely precisely, the influence of these reports, it is bound to be helpful both to the work of that Committee and to the work of our Committee. Perhaps Lady Serota would be able to give consideration to the way in which that could be done.

A. I could give some practical examples of where changes have been made and governments have taken note of the Select Committee's views. I am sure it would be possible to let you have a list indicating that. We have also attached to our working group report the proposals in the Luxembourg draft Treaty and put alongside it the Select Committee's recommendations on a number of the issues currently under consideration. The list could include both influence on our own Ministers and others as well. If that is your wish, we could try to provide that information. I could give you chapter and verse now. Some instances are burnt into my soul, particularly the Fraud report. There are a number of concrete examples where it could be done, and I am sure that in collaboration with Mrs Martin we could produce such a note (*see p 48 below*).

67. Lady Serota has referred to the co-decision proposal and has already answered one of the questions I had on that point, namely, as to where our own Government stand on the issue.

A. I say that informally, not formally.

68. It is a comfort that the Government are against the proposal. Does Lady Serota happen to know whether when the decision is made on the co-decision proposal it is to be taken by the majority, or does the veto apply?

A. This is a matter of inter-governmental negotiation in the discussions now proceeding.

#### Chairman

69. Some Members of the House have recommended that we set up another full standing Select Committee like the European Communities Committee and the Science and Technology Committee, but a considerable number of Peers have emphasised the value that they attach to the *ad hoc* committee system. A notable example is Lord Aldington's *ad hoc* Committee on Overseas Trade which reported in the mid-eighties, and there are other more recent examples.

A. The report on murder and life imprisonment?

70. Precisely. Another example is abortion. That report had a very important impact on subsequent debate on the Fertilisation and Embryology Bill. The considerable volume of replies coming in, both in

quality and quantity, emphasises the importance of this and the fact that perhaps we do not fully take advantage of the great experience and expertise which the House has in a number of matters, be it higher education, aspects of foreign affairs other than the European Community, aspects of defence and so on. There is, for example, a desire to set up an *ad hoc* committee on sustainable development. A suggestion has been made that economic and social matters should be looked at; matters touching on the judiciary should be looked at; and it is suggested that we look at the state of the British merchant fleet. It has not been possible to set up an *ad hoc* committee on sustainable development because of the lack of resources. If it is the case that it is not possible to economise, as it were, on the resources (in terms of both Peer and clerk time) which we have devoted to the two existing Select Committees, as I see it the only other way in which it would be possible for the House to take full advantage of the talent which it undoubtedly possesses by setting up *ad hoc* committees from time to time is by seeking further resources. My question goes beyond your position as Chairman of the European Communities Committee. However, speaking generally and also in your other important position as Principal Deputy Chairman of Committees, do you have any comments on whether we are denying ourselves a role in which the House has proved its worth in the past?

A. I am a great believer in *ad hoc* committees. I was privileged to be a Member of the first one after the war which you set up as Leader of the House, namely, the Select Committee on Sport and Leisure. They can be of immense value and can use the expertise of Members of this House in a way that is perhaps not possible elsewhere. I believe it is right to have them from time to time on issues of public importance and concern, and sometimes on issues which foreshadow legislation, such as the murder and life imprisonment enquiry and the human embryo enquiry. They can be of great value and advantage. I am not quite clear how they have been staffed in the past, because to my knowledge neither the Select Committee on Science and Technology nor the Select Committee on the European Communities has absorbed any extra staff. Presumably, we have been able to mount them within our present staffing resources from time to time, though not necessarily regularly. I personally would favour the setting up of the suggested liaison committee because I think it is right and proper that the issues surrounding the setting up of specific select committees should be considered, by everyone affected including the use of the staff resources involved. It is a suggestion that I made some time ago to the committee which looked at the working of the House some three or four years ago. I hope that this Committee will pursue it, because I think it right to bring together those concerned to discuss the different possibilities, decide on priorities and see that the resources are made available to serve the committees. To my knowledge, we have had no increase of staff when *ad hoc* committees have been mounted. I suspect the work has been done at the cost of great strain and stress on the existing staff.

[Chairman *Contd*]

71. I should like to conclude first by saying we are glad you have brought Mrs Martin with you to this session of the Select Committee. I know of the considerable part she has played in the work of the Select Committee over a long period of time. Lady Serota, you have placed us very much in your debt by the evidence you have given and by the frankness and openness of your replies. It is also fair to say that you have placed this House very much in your debt by your stewardship over the past four or five years of a very important select committee. Your evidence this afternoon has demonstrated the very great width and depth of the knowledge which you bring to the affairs of

the Select Committee. Thank you very much indeed.

A. Thank you, my Lord Chairman. I also thank Members of the Committee for the kindness with which they have treated me this afternoon. I expected more of a grilling. I would not want to conclude my evidence without taking the opportunity to place on record the very high regard in which the Select Committee and the Members of the sub-committees hold the staff of the committee office who serve it. In my experience, at every level they are the most able, energetic and enthusiastic group I have ever been privileged to work with, and the House and Committee owe them a very great debt.

### Supplementary Memorandum by the European Communities Committee

#### INFLUENCE OF THE EUROPEAN COMMUNITIES COMMITTEE

##### INTRODUCTION

1. Most Select Committees seek to influence the policy of the British Government. So influence can be measured in terms of the Government's response and subsequent legislative or administrative action. The European Communities Committee aims to influence both British Government policy *and* the eventual shape of Community legislation. The end result can be influenced via British Ministers, but also through the Committee's wider audience (in Community institutions and other Member States). A result which reflects the Committee's views may or may not do so because of a Report: there are many other influences at work. Influence is thus impossible to quantify.

2. This is one of the reasons why the Committee do not routinely monitor the influence of our reports. The other is that monitoring would use scarce manpower resources which we prefer to use on scrutiny itself. But we welcome this chance to review the influence of the Committee's Reports. This note describes (with examples) the ways they can have influence. The Appendix analyses all the Reports of the last complete session and the Government's reaction to them and two earlier reports of particular importance, namely those on *Staffing of Community Institutions* and on *Fraud against the Community*. This detailed analysis is rather lengthy, but will, we hope, give a fair picture of the impact of the Committee's Reports both at national and Community level.

##### WAYS IN WHICH THE COMMITTEE CAN HAVE INFLUENCE

###### *Debates in the House*

3. A report by a Select Committee can have influence as a result of support of members of the House of Lords in debates which can take place on the floor of the House when the report is introduced and considered. One example was the 8-hour debate on the Report on *Economic and Monetary Union and Political Union*. Other debates are more specialised and the reports more likely to be influential in other ways.

###### *United Kingdom Government Negotiating Position in the Council*

4. The reports of the European Communities Committee frequently appear to influence the negotiating position of the United Kingdom Government. The Government is not bound by the conclusions of the Committee: but Cabinet Office guidance to departments now makes it clear that they should respond—in writing or in debate—to the Committee's Reports. This recent change in practice is perhaps itself a sign of the Committee's influence. It has even been known for the Select Committee report to form the negotiating text taken by the United Kingdom minister to a meeting of the Council. Of course there are other occasions when the Government disagrees with the Committee: one major example was entry to the Exchange Rate Mechanism of the European Monetary System which the Committee supported from 1982. The extent to which the Government has taken recent reports on board is discussed in more detail in the Appendix to this note.



24 June 1991]

[Continued]

*Influence within Community Institutions*

5. There is evidence, usually but not always of an anecdotal nature, to suggest that our reports can influence the decision-making processes of the Community institutions themselves. The Report on the *Nitrate in Water* directive (agreed by the Council recently) criticised the lack of a scientific basis to the proposal. We understand the negotiations drew on the scientific evidence collected and published by the Committee with the Report.

6. There have been instances where the Community institutions have acknowledged the Committee's influence. One example: the European Parliament proposals on *Immunities and Privileges of MEPs*. Originally civil as well as criminal proceedings were covered. The revised proposals expressly excluded civil proceedings from the scope of immunity, with an explanatory commentary relating this amendment directly to the work of our Committee. Second, in two of Sub-Committee E's recent enquiries, European Parliament witnesses have undertaken to propose amendments to draft legislation reflecting criticisms made by the Sub-Committee, and have subsequently done so. Third, Judge David Edward of the European Court of First Instance, giving evidence to the enquiry into Economic and Monetary Union and Political Union said that an earlier Select Committee Report on *Human Rights* had "killed the proposal that the Community should be brought within the mechanism of the [European Convention on Human Rights] system" (Q 564).

7. The Committee has almost certainly had an effect on the Commission's internal practices and procedures. One example is the *Practice of the Commission in Competition Cases*. Nearly all the suggestions in the Committee's report (8th Report, 1981-82) were adopted by the Commission: firms have been allowed much greater access to the Commission's files than the legal minimum; there is an independent hearing officer for the factual investigation of the charges; a firm's legal adviser now may be present during on-the-spot inspections by the Commission.

## CONCLUSION

8. The Committee's influence on Government varies widely from one enquiry to another. So too does departments' willingness to give a detailed response to our reports. The Committee is continuing to press for better and prompter responses, which will help us to gauge our influence on Ministers. But the indications are that even in cases where the Government does not follow the Committee's line, the legislation agreed in Brussels may often reflect our views. So it seems sensible to continue the practice of making reports available to Community decision-makers (carefully targeted) as well as to peers and the British Government.

## APPENDIX

## 1. INFLUENCE ON GOVERNMENT OF THE COMMITTEE'S REPORTS, SESSION 1989-90

## FREEDOM OF ACCESS TO INFORMATION ON THE ENVIRONMENT

(1st Report, 1989-90, HL Paper 66)

The Committee welcomed the trend towards greater openness in accountability in environmental matters. There should be a presumption in favour of access to information held by public agencies both at Community and national level concerned with the environment. Confidentiality must always be justified. The Report discussed in detail the scope of the directive and exemptions to it. The Committee thought that the means of access must be "user-friendly", with a register for initial access and fuller information at a second tier. A proposal for three-yearly reports by Member States was a side issue and should be addressed separately.

The response is still outstanding.

## THE DELORS COMMITTEE REPORT

(2nd Report, 1989-90, HL Paper 3; Response: Debate on 18 December 1990, HL Deb Cols 67-73)

The Select Committee felt that the United Kingdom should be at the centre of future developments in the Community, both giving and receiving strength from a closer union, one which the United Kingdom had a major part in shaping and in which it would play a major role. It was hard to believe that the United Kingdom could be a full partner in the discussions at inter-governmental level due to start at the end of 1990 unless it was a member of the exchange rate mechanism (ERM). After weighing up the economic pros and cons of membership of ERM, the Committee came down in favour of joining before July 1990, the date on which Stage One of the Delors proposals was to begin.

The Government said that sterling would enter the ERM during Stage One: when the level of United Kingdom inflation was significantly lower; when there was capital liberalisation in the Community; and when real progress had been made towards the single market, freedom of financial services and strengthened competition policy.

The United Kingdom joined the ERM in October 1990. We understand that the decision to do so was taken in June 1990.

24 June 1991]

[Continued

## A COMMUNITY SOCIAL CHARTER

(3rd Report, 1989–90, HL Paper 6; Response: Debate on 19 February 1990, HL Deb Cols 81–9)

The general principle underlying the Report was that the United Kingdom would have a greater say on the social charter in particular and on the future of the Community in general if it could persuade its partners that it was fully committed to the Community. So the Government should accept the draft—flawed in some respects as it was—as a basis for negotiation. A large proportion of the Charter reflected international or Community obligations which were already binding on the United Kingdom. The Charter should be a statement of these generally accepted principles and should not include detailed prescriptive measures. It should provide explicitly that its adoption would not affect the question of competence to legislate in the various areas it covered.

The United Kingdom Government was the only one not to sign the Charter (because of concerns about the effect on jobs, the Community's power to act, and the difficulty of standardising labour market policies). It agreed with the Committee's criticisms of the Charter text but did not accept that it should have accepted the Charter as a basis for negotiation and reserved its right to challenge individual proposals for some legislation brought forward under its auspices.

The Government now accepts the advantages of being at the centre of Community negotiations in general but maintains its opposition to much of the Social Charter Programme (supported to a considerable extent, it must be said, by later Reports of the Committee).

## IRRADIATION OF FOODSTUFFS

(4th Report, 1989–90, HL Paper 13; Response: 5 February 1990, HL Deb Cols 600–604)

The Report gave cautious support to the use of food irradiation while stressing the need to assure the consumer of its safety. There should be further research in some areas, and monitoring, particularly on its effect on nutrients in foods. There was no scientific reason for restricting its use to certain products. Irradiation must not be used as an excuse for relaxing hygiene standards for food manufacturing and processing. National legislation should await the agreement of Community rules.

The Government accepted the Committee's views but would not delay the introduction of the national licensing system pending agreement at Community level.

The Report was also relevant to the Food Safety Bill (Committee Stage: 18 January 1990).

## HILL LIVESTOCK COMPENSATORY ALLOWANCES (HLCAs)

(5th Report, 1989–90, HL Paper 19; Response: Cm 1084)

This Report considered the changes to the CAP structural framework under which HLCAs are paid in the United Kingdom. The Report supported Her Majesty's Government's criticism of the Commission's proposals to introduce headage limits for eligibility for Community funding and called on Her Majesty's Government to make good any shortfall. The Committee supported the Commission's proposal to leave Member States the choice of environmental criteria to be applied.

The Government recognised—without commitment—the need to meet the shortfall in funding. They broadly accepted the Committee's views on environmental matters.

The regulation agreed—by qualified majority with Her Majesty's Government outvoted—included headage limits. Environmental criteria were left to Member States.

## VOTING RIGHTS IN LOCAL ELECTIONS

(6th Report, 1989–90, HL Paper 48)

The Committee said that all Community citizens should be given the right to vote and to stand for office in local elections at their place of residence. They found no convincing evidence that United Kingdom public opinion would be hostile. Detailed recommendations covered the administrative details of such a change. There were no powers in the Treaty to extend voting rights in this way: but it could be done by Resolution of the Member States' Governments.

The Government remained firmly opposed to such a change on the grounds of public opposition and administrative difficulties.

These differences of opinion—and Home Office inadequacies during the enquiry—were pursued at length in correspondence and in debate.

The Inter-Governmental Conference on Political Union is currently considering a Treaty amendment on this point. Press Reports (eg *Independent* 8 July 1991) suggest that the Government is prepared to agree to it.



24 June 1991]

[Continued

## FREE MOVEMENT OF PEOPLE AND RIGHT OF RESIDENCE IN THE EUROPEAN COMMUNITY

(7th Report, 1989–90, HL Paper 26; Response: HL Paper 85, p32 (1989–90))

The Report said that the powers to confer rights of free movement throughout the Community are not limited to those who move for an economic purpose. It welcomed the proposals to codify existing rules and extend them to students, pensioners and the self-supporting. But the definition of family members as “those living under the roof” of the worker or his/her spouse would be open to abuse.

The Government had for many years been strongly opposed to the proposal. They maintained a reserve on the Community’s competence to legislate in the area, and were concerned at the possible burden on public funds. Following the Report, the Government accepted the Community’s competence (though they did not accept all the Committee’s views on legal base) and the measures adopted by the Council correspond closely to the Committee’s views. The definition of family members was changed by the Commission.

## CORRESPONDENCE WITH MINISTERS

(8th Report, 1989–90, HL Paper 28)

The letters published in the Report include the following:

*13th Company Law Directive: Takeover Bids (5032/89)*

The Committee endorsed the evidence of the City Panel that the flexible rules of its voluntary code should not be replaced by binding harmonised ones. The Government partly shared this view but thought some co-ordination would help British companies wishing to expand in other Member States.

*Transparency of Energy Prices (8689/89)*

The Committee welcomed the proposal but asked how rules on price transparency would work after privatisation. The Government gave a full reply. (HL Paper 28, p30)

*Air Transport: Competition (8570/89)*

The Committee welcomed the proposal but pointed to a possible conflict with third country laws and international agreements. The Government said they would explore this in negotiations.

*Vessels Carrying Dangerous Cargo (7074/89)*

The Committee welcomed the proposal but criticised the provisions about maintaining radio contact with a coastal station. Work should be co-ordinated with the International Maritime Organisation (IMO). The Government accepted these points.

## APPLIANCES BURNING GAS

(9th Report, 1989–90, HL Paper 36; Response: HL Paper 28, p28)

The Committee welcomed the Directive as a first step to maintaining high safety standards. It supported the proposed mandatory third party certification scheme despite the difficulties for smaller companies. The technical requirements must not discriminate inadvertently as between Member States.

The Government, in reply to an earlier letter making the same points, were “not convinced” that a compulsory third party certification scheme would improve levels of safety in this country and “ensure the well-being of all segments of the gas appliance industry”.

## FARM PRICE PROPOSALS 1990–91

(10th Report, 1989–90, HL Paper 34; Response: HL Paper 85, p33 (1989–90))

In response to an earlier letter making the same points, the Government expressed their gratitude for the Committee’s support for their tough line. Reporting on the agreement reached, the Minister welcomed the devaluation of the green pound—a significant step to the removal of monetary gaps by 1992. Pressure to resist CAP reform had been resisted. Co-responsibility levies were still in place but the Government would seek their eventual abolition.

The Committee regretted that the Commission had not taken the opportunity—at a time of high world prices—to cut support prices further. Their approach did not bode well for GATT. The Committee called on the Commission to press forward on agrimonetary reform with a view to 1992. The Committee welcomed the extension of the suckler cow premium to mixed beef/dairy herds. But co-responsibility levies—on milk and cereals—should be abolished. The Report also included preliminary views on rural development policy—discussed in more detail in the *Rural Society* Report.

*24 June 1991]**[Continued]***TROPICAL FORESTS**

(11th Report, 1989–90, HL Paper 40; Response: Debate 12 October 1990 HL Debs Col 565)

The Committee agreed that the Community could play a useful role on this area of vital world concern. Its aid and trade strategy should be to support sustainable management practices, which should focus on minor products as well as timber. A trade ban or levy would however not be effective. The Community must ensure effective use of environmental assessment procedures. Training tropical foresters should also have high priority.

The Government gave a “very warm welcome to the Committee’s analysis and conclusions”. It recognised the Community’s involvement and the need for a Community strategy. It agreed that trade action could be counter-productive and assured the Committee of its commitment to training.

**AIR TRAFFIC CONTROL**

(12th Report, 1989–90, HL Paper 41)

The central issue on air traffic control was whether the Commission should have a significant role in setting and implementing a Community policy. The Committee concluded that the existence of international organisations like Eurocontrol (with wider membership than the Community) meant that Community involvement would be confusing and unhelpful.

The Government shared almost all the Committee’s views but did not agree that Community funding rather than user charges should be used for infrastructure improvements.

**EUROPEAN SCHOOLS AND LANGUAGE LEARNING IN UNITED KINGDOM SCHOOLS**

(13th Report, 1989–90, HL Paper 48; Response: HL Paper 85, p36, (1989–90)) Debate: 13 July, HL Debs Col 593–601)

The enquiry had two themes, corresponding to the two limbs of the Report’s title. On European Schools, the Committee was against increasing the number of such schools in the United Kingdom on the grounds of cost. It advised against United Kingdom maintained schools offering the European Baccalaureate on practical grounds because it would mean some courses must be taught in languages other than English. The practical problem was the serious shortage of teachers. An allied concern was the lack of interest in foreign languages. The Committee called for adequate in-service training, a keeping-in-touch scheme for returners, more teacher exchanges, a change in charging policy for pupils’ visits, and foreign language teaching in primary schools. But nothing less than a change in cultural attitudes would solve the deep-seated malaise.

The Government welcomed the Report because it would raise the profile of modern foreign languages. The national curriculum requirements were a major step forward, as was a campaign to recruit more teachers. But compulsory primary teaching was not feasible at present. The question of charging for visits was being investigated.

**RELATIONS BETWEEN THE COMMUNITY AND EFTA**

(14th Report, 1989–90, HL Paper 55; Response: Debate 22 June 1990, HL Debs Col 1180)

The Committee agreed with the Community approach to the establishment of a European Economic Area (a wider single market including EFTA countries), namely that there should be no weakening of the Community’s decision-making autonomy or slackening in the efforts to complete the single market. The Report called for EFTA’s derogations (for Icelandic fish, for instance) to be limited in number and in duration. EFTA must be allowed to influence future decisions but not to interfere with the Community’s normal legislative procedure. A particular institutional difficulty was adjudication and enforcement: that is, the involvement of the Court of Justice and the Commission’s role of enforcing competition rules.

The Government endorsed “virtually all the report’s conclusions” and said they were very largely reflected in the Community’s negotiating position.

**PRODUCT SAFETY**

(15th Report, 1989–90, HL Paper 57)

The Committee agreed the need for a duty at Community level to market safe products. The Directive should cover all moveable manufactured products—new and second hand—except food and pharmaceuticals. The Report discussed the definition of “safe product” (not an absolute term) and “suppliers” (all in the supply chain); and the need for Member States to have adequate powers of enforcement and for the Commission to monitor that enforcement.

A Government response, announced “shortly” in December 1990, is still not forthcoming. Lord Oliver has therefore tabled both an Unstarred Question and a Question for Written Answer to elicit why one was not received until July 1991. The Response showed that since the enquiry there had been a number of changes in the Government’s views, which were now much closer to those of the Committee. They continue to differ on only three points (two of them highly technical) and gave good reasons for their position.

The Commission’s revised proposal is in line with many (but not all) of the Report’s conclusions.



*24 June 1991]**[Continued]***CIVIL AVIATION: A FREE MARKET BY 1992?**

(16th Report, 1989–90, HL Paper 63)

The report on a free market for civil aviation fully supported the Commission's efforts to overcome the protectionist obstacles raised by some Member States. One proposal would remove a single country's veto on the fare structure for a route by introducing a system of double disapproval; another would liberalise operating licence procedures and cabotage. Both were fully supported by the Committee. Other main conclusions were that the number of airlines operating is less important than ensuring effective competition between them. The proposals were adopted—with the full support of the Government—in the course of the enquiry.

The Government shared the Committee's support for the double disapproval system, regarded it as essential that liberalisation should be accompanied by safeguards against predatory behaviour, and welcomed the moves towards uniform licensing criteria.

**A COMMUNITY FRAMEWORK FOR R&D**

(17th Report, 1989–90, HL Paper 66; Response: Debate on 28 January 1991 HL Debs Col 510)

The Committee agreed with the six strategic lines proposed for the programme, but had reservations as to the provision for research into economic and social cohesion. Pre-screening of bids for funds should be instituted. The Committee identified four categories of projects which should receive support. It criticised the Commission's definition of "near market research" as being too rigid. The Commission should tighten up monitoring and evaluation. The Committee also found it necessary to discuss how the Treasury treat funds received in this country in the light of the Community principle of "additionality" and the Treasury practice of "attribution". Because the Government treated Community funds like British public funds they were dealt with in the public expenditure survey. The system appeared arbitrary and potentially damaging to British research.

The Government view was that Community funds came from the same pool of resources as direct funding from Government departments and the two should therefore be evaluated and controlled on the same basis. The practice of successive governments had been not to go into the details of survey discussions. However the survey arrangements allowed for Government to look carefully at any mismatches between domestic and Community priorities.

This enquiry was followed up by scrutiny of individual programmes as they were proposed in the light of the criteria set out in the Report. The issues raised in correspondence with Ministers include supplementary programmes; exceptional procedures; evaluation; co-operation with third countries; project selection; and "comitology".

The question of additionality and attribution is being pursued in other enquiries (eg the current one into regional policy).

**ROAD SAFETY IN THE COMMUNITY**

(18th Report, 1989–90, HL Paper 70)

The Committee restated their view that the Community does not have general competence to legislate on road safety. Of the proposals examined, the one on roadworthiness tests was for the Community but those on speed limits and seat belts were for Member States. The proposal to require adults to wear rear seat belts was welcome, though timing was tricky, and the exemption for children was retrograde. The dangers of excessive speed would be better dealt with by enforcing speed limits than harmonising them. On this point the report called for a review of how speed limits were notified to motorists. On the harmonisation of roadworthiness tests there should be no levelling down.

The Government welcomed the Committee's stance which was supportive of its line and announced that it was setting up a trial of variable message signs on motorways.

**EUROPEAN COMPANY STATUTE**

(19th Report, 1989–90, HL Paper 71)

The opinion of the Committee reinforced by the evidence received, was that the ECS in its present proposed form would not be attractive. It would be unfortunate if this attempt to achieve something which the Committee believed was in principle useful and of benefit to the Community failed for lack of adequate consideration of the factors involved. The Committee advocated a simpler proposal with a greater reliance on national law.

The Government commended the Report to MPs at the opening of the relevant Commons debate (20 October 1990, HC Deb Col 45) and shared the Committee's views of the proposal's complexities. But no formal response was received until November 1991.

24 June 1991]

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Amended proposals (6516/91) have recently been published. Although the revised proposal follows many of the Committee's recommendations, the Government maintains its previous approach in the explanatory memorandum and does not refer to the Report.

#### MEDICINAL PRODUCTS

(20th Report, 1989–90, HL Paper 77)

The enquiry covered three single market measures including labelling and leaflets. The Committee supported the proposals. It considered that while leaflets could provide useful additional information, contra-indications should be put on the immediate packaging.

No response yet received. The proposals—just adopted—seem to have been altered to meet the Committee's (limited) recommendations.

#### VOCATIONAL TRAINING AND RE-TRAINING

(21st Report, 1989–90, HL Paper 78; Response: HL Paper 21, p 23 (1990–91))

The enquiry was into two Community programmes on vocational training—for young people (PETRA) and on a continuing basis (FORCE). The FORCE programme was adopted during the enquiry, so the report concentrated on implementation in the United Kingdom. (PETRA was further considered in the enquiry into Young People in the 1990–91 Session.)

The Committee called for a 10 point national strategic framework for vocational training (including adequate forecasting of future skills requirements, national training targets and an integration of academic and vocational qualifications). They called for a “kite-mark” scheme to reward employers who train well. Despite recent progress there was still a need to improve access to training, eg for women returning to work who were denied access because of the cost of child care. Some form of statutory underpinning was necessary to ensure that employers provided young people with training. Vocational training should be seen as an investment not a cost. Urgent action was needed.

In a very detailed response, the Government shared the Committee's call for better training. The recently created TECs were locally based and employer-run, a guarantee that they would meet local needs. They accepted the need for a national framework, but not for national targets. They were considering how to build bridges between academic and vocational qualifications. Much was being done to increase women's access to training, taking account of the Sex Discrimination Act 1975.

Following the Statement on the White Paper on Education and Training: 16–19 year olds on 20 May 1991, Viscount Ullswater said that—with the exception of using a voluntary approach—the White Paper “wrapped up” the Report's proposals (HL Deb Col 54).

#### A SINGLE MARKET FOR CARS

(22nd Report, 1989–90 HL Paper 76)

The Committee's view was that whatever the final agreement on Japanese imports, Community manufacturers would face a fierce battle for market share. They would have to become more competitive with the help of mutual recognition of type approval, wise use of competition policy rules, and united export efforts. A brief transitional period before the single market was opened would best balance the conflicting interests involved. “Transplant production” should not—assuming a minimum local content—be classified as Japanese. To do so would be in breach of GATT and impolitic in terms of inward investment.

The Report was recommended for debate but the Committee later decided that it should not be debated—at least for the time being. So no response has so far been received. (The views in the Report are in line with the Government's stated position on the issues.)

#### THE COMMUNITY DRIVING LICENCE

(23rd Report, 1989–90, HL Paper 79; Response: HL Paper 21, p 34 (1990–91))

The Report supported harmonisation of driver licensing systems, training and testing but said the indefinite mutual recognition of other Member States' licences would have unwelcome implications for the United Kingdom penalty points system. The Committee endorsed witnesses' criticism of the proposed extra test for minibus drivers (because of its effect on voluntary organisations). While recognising the sensitivities, it did not object in principle to a photograph on a licence. It criticised the Commission's two-tier system for motorcycles (by size of engine). The Committee thought that some aspects of road safety—including harmonisation of rules on endorsements and disqualifications—were not a Community matter (and *ultra vires* Article 75 of the Treaty of Rome).

The Government welcomed the Committee's views on harmonisation, shared its concern on long-term recognition, noted its views on photographs, and welcomed its line on minibuses. The Department have recently made clear that they are prepared to interpret Article 75 more widely than the Committee.



24 June 1991]

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## FUTURE OF RURAL SOCIETY

(24th Report, 1989–90, HL Paper 80; Response: Letters From Baroness Blatch—HL Paper 21, pp 35–7 (1990–91); debate 15 November 1990 HL Deb Col 534)

This enquiry was based on a Commission White Paper. The Report analysed the implications for the Community rural policies in general and the particular impact in the United Kingdom. (About half of the 30 conclusions in the summary relate to each.)

The main thrust of the Report was in favour of a shift in Community rural policy (and financial support) to take account of agricultural restructuring and urbanisation of the countryside. Specifically, the Community must look beyond agriculture as a means of promoting rural economic prosperity. The three structural funds must be co-ordinated perhaps in a new rural development fund. Flexibility (and clearly defined objectives) was needed to meet the diverse needs of different rural areas. In particular policy areas, the Report made recommendations on how to tackle the problem of affordable rural housing; and on the need to broaden the courses run by the Agricultural Training Board. It called for the administration of the structural funds to be devolved to reduce bureaucracy. United Kingdom rural development agencies could serve as a model for other Member States.

In response the Government accepted many of the conclusions and recommendations, notably in regard to low-cost rural housing and the contribution which the structural funds could make to rural areas. The need for a shift in emphasis at Community level was also accepted. The Minister said she was unable to reply to all the recommendations separately but that all would “be taken into account in the future as our policies for rural areas develop”. The Government have recently followed the Committee’s recommendation on set-aside (HL Deb, 11 July 1991, WA 98).

This Report has been relevant to the current debate on the reform of the CAP.

## PAYING FOR POLLUTION—CIVIL LIABILITY FOR DAMAGE CAUSED BY WASTE

25th Report, 1989–90, HL Paper 84; Response: HL Paper 85, p 45 (1989–90))

The main findings of the Report were that strict civil liability should apply to those who carry out dangerous activities which give rise to environmental damage. The Directive should in principle apply to all forms of waste (which should be explicitly defined). Liability should cover general environmental harm (“injury to the environment”) as well as damage to persons or property. The predominant objective of the proposal was environmental so Article 130S should be used in preference to Article 100A.

The Report is to be debated on 17 October.

## CORRESPONDENCE WITH MINISTERS

(26th Report 1989–90, HL Paper 85)

Among the proposals covered in the letters published in this Report were:

*Air Pollution from Passenger Cars (4704/90)*

The Committee criticised the reliance on catalytic converters, which do not reduce carbon dioxide emissions. The Government accepted this: the Commission was considering how best to deal with carbon dioxide emissions.

*Acute Human Poisoning (9275/89)*

The Committee pointed out that the proposal would involve a transfer of competence to the Community and called for a Resolution by Member States not Community legislation. The Government said they would bear these views in mind during negotiations.

*Community Transit (9608/89)*

The Committee argued that the proposal should be based on Article 99 (taxation) as well as Article 100A (single market). The Government agreed and abstained when the Council adopted the proposal.

*Motor Insurance (10764/89)*

The Committee disagreed with the Government’s view that Article 100A was not the proper legal base, saying that the proposal did not relate to free movement of persons.

*Import of Furs*

The Committee supported the Commission’s use of Article 113 (external trade) which had been criticised by the Government.

*Vienna Convention against Traffic in Narcotic Drugs*

The Committee endorsed the Government’s view of the legal basis for participating in this international convention.

24 June 1991]

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The following letters, sent during the 1989–90 Session, were published as Correspondence with Ministers in the 6th Report, Session 1990–91 (HL Paper 21).

*Investment Services (4707/90)*

The Committee supported the evidence received from the British Bankers Association, and pointed to the risks of undue haste in negotiations. The Government broadly agreed on both scores.

*Capital Adequacy (6208/90)*

The Committee stressed the need for liaison with the Basle Committee on Banking Regulation. The Government accepted this, with some reservations on the details of the Basle Committee's approach.

*1991 Draft Budget*

On the basis of the Report on Economic and Monetary Union and Political Union the Committee called for adequate funding for the Court of Justice (with its responsibilities for implementation) and the Court of Auditors (responsible for financial control).

*Control of Weapons (10074/89)*

In the light of the enquiry into Border Controls the Committee said that the proposed harmonisation of firearms rules, though welcome, was not adequate to justify a reduction in United Kingdom controls at borders. National minimum age limits should continue to apply. Article 100 would be a better legal base than Article 100A. The Government welcomed the Committee's views.

*Barriers to Takeovers (6459/90)*

While welcoming the proposals in general the Committee drew attention to the special case of the Reuters Founders Share Company which should be safeguarded in the interests of independence of information. The Government said they were considering a general derogation for the media, including Reuters.

*Negotiating Mandates for Environmental Matters*

The Committee regretted the growing practice of the mandate given to the Commission to negotiate on the Community's behalf being tabled late and then recorded in the unpublished Council Minutes. This made effective scrutiny impossible. The forthcoming Inter-Governmental Conference should reform the procedure so as to require mandates to be in the form of a legal instrument with a proper legal basis. Environment Ministers agreed to raise the matter with the Foreign and Commonwealth Office. The Government accepted the desirability of prompt proposals and a proper legal base.

*Tobacco Advertising*

The Committee opposed the use of Article 100A (on removing barriers to the single market) as the basis for allowing a total ban on advertising in some Member States. The Government agreed.

*Aid to Poland and Hungary*

In continuing correspondence the Committee questioned the legal validity of the measures taken, while recognising their political importance.

ECONOMIC AND MONETARY UNION AND POLITICAL UNION

(27th Report, 1989–90, HL Paper 88; Response: Debate 22 November 1990 HL Debs Col 886)

The enquiry and report covered the whole range of proposals to be discussed by the Inter-Governmental Conferences on Economic and Monetary Union and Political Union—except the common defence policy. The report first defined key terms such as federalism and sovereignty. The Community contained federal elements but Member States retained their independence and international sovereignty in a unique structure. The members of the Community were committed towards “ever closer union”: the question was what steps should be taken and when. To adopt a fully fledged common foreign policy would be to abandon each nation's international sovereignty. But a single currency would just mean a pooling of the parliamentary power over monetary policy. “Subsidiarity” was a useful tool for deciding at which level—Community or national—action should be taken and as a means of restoring an imbalance in the Community's work without over-centralising it. The Community institutions must be more democratically accountable, both to national parliaments and to the European Parliament, which should strengthen its monitoring of the Commission in its executive role. The European Parliament should not however be given full powers of legislative initiative or co-decision. The goal of a single monetary policy, a single currency and a body responsible for price stability was generally accepted. The question was how and when to proceed to that goal. The Committee saw merits in the Government's hard ecu proposals but did not think the scheme was viable. Monetary union required anti-inflationary convergence to be successful. There should be a European monetary authority which should be independent day-to-day but accountable to parliaments. The United Kingdom must not be left out of a monetary union; the economic cost would be substantial.

The Government agreed with much of the political side of the report. But the response concentrated on the monetary side and rejected the recommendation that the Government should accept the goal of a single currency because it “would involve a considerable transfer of sovereignty over monetary policy to a European central bank” and “economic convergence remains a long way off”.



24 June 1991]

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## COMMUNITY SHIPPING MEASURES

(28th Report, 1989–90, HL Paper 90; Response: Debate 14 February 1990, HL Debs Col 269)

The proposals were intended to halt the decline in the Community merchant fleet. While endorsing this aim, the Committee criticised the proposed EUROS register as another kind of flag of convenience. The Community was not in a position to exercise the duties of a flag state. The various proposals in the “EUROS package” should be unwrapped and examined on their merits. Many were to be welcomed and pursued independently. The priority to be given to EUROS-registered ships for transport of food aid would go against Community rules on tendering. Cabotage must also be fully liberalised, not restricted to such vessels. Requiring all Community ships to be manned by EC nationals would be unduly restrictive, but a common language for the crew was vital on safety grounds. Taxation reliefs were a matter of national competence (but the case for national action was a strong one).

The Government “entirely agree” with the Committee’s view that the package was a “distraction from the real problems”. They would press vigorously for speedy liberalisation on cabotage, though special arrangements might be needed for island services. The Report had in fact endorsed their position and the Government had no difficulty in agreeing with all the Committee’s recommendations.

## 2. INFLUENCE OF EARLIER MAJOR REPORTS

## STAFFING OF COMMUNITY INSTITUTIONS

(11th Report, 1987–88, HL Paper 66; Response: Debate 15 July 1988, HL Deb Col 1046)

The Committee found no evidence of general overstaffing in the institutions. In some cases, quite the reverse. But there were serious management defects. And the British were under-represented in certain middle-ranking grades. The main recommendations included adequate staffing for new Commission tasks; but a reduction in the number of Commissioners; closer co-operation between institutions including joint recruitment; limiting the practice of giving permanent posts to those originally recruited on a temporary basis to the Commissioner’s *cabinet*; better publicity about recruitment and careers; more recruitment at grade A8; and limiting the timescale for recruitment. On the United Kingdom side, there should be a special Cabinet Office advisory unit to advise on careers in the Community; more government grants for study in other Member States; and promotion safeguards on return for British civil servants working in the Institutions.

The Government welcomed the Report: there had been “improved recruitment and publicity efforts in the United Kingdom, some prompted by the report”. The Minister reported that the Commission’s own view of the Report was that it “usefully highlights areas where the Commission is seeking to improve existing arrangements.”

Since then, a Cabinet Office unit has been set up, responsible *inter alia* for a European fast stream which forms part of the Civil Service recruitment procedure. British Government scholarships at the College of Europe, Bruges, have been increased four-fold. The Commission recruit at A8 grade more frequently than before and have organised tests for “generalists”—to reflect British university tradition—as well as for economists and lawyers. Promotion *in absentia* or on return is now accepted in principle.

## FRAUD AGAINST THE COMMUNITY

(5th Report, 1988–89, HL Paper 27; Response: Debate 13 April 1989, HL Deb Col 425)

The Committee undertook an enquiry into Fraud against the Community in response to a Commission Report on Tougher Measures to Fight against Fraud (9392/87). (The Committee had been struck by the small number of staff—10—proposed to set up an anti-Fraud unit). The *ad hoc* Sub-Committee appointed first identified the main causes of the scandalous level of fraud and then proposed corresponding remedies:

- Simplification of the Regulations
- Reduction in the number of product classifications
- The issue of lucid instructions at each operating level
- Establishing effective internal controls
- Better training of staff
- Improved exchange of information throughout the Community
- Abolition of advance payment for FEOGA Guarantee expenditure
- Intensified efforts by Member States to detect fraud
- Vigorous pursuit of criminal prosecutions and civil claims
- Use of publicity when fraud and irregularity is established
- Reporting fraud and irregularity to the Commission
- Clarification of the definition of fraud and irregularity for the purpose of reporting
- Closer surveillance by the Commission in the Member States.

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*24 June 1991]**[Continued*

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In the debate the Lord Privy Seal welcomed the “straightforward practical approach” of what he called an “absolutely excellent” report. The Government had already been committed to fighting fraud, but stepped up its initiatives at Council level, putting forward a series of proposals at the ECOFIN Council the week after the debate. These are continuing.

The Committee keeps a watching brief on fraud-related matters and frequently reminds Ministers of the Report’s implications for current proposals. A large number of the Committee’s recommendations have been actively promoted by the Government and some are already in operation or in course of being accepted in Community law and practice.

*October 1991*

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MONDAY 1 JULY 1991

Present:

Bancroft, L	Pym, L
Boston of Faversham, L	Thurlow, L
Dormand of Easington, L	Tordoff, L
Jellicoe, E (Chairman)	

**Written evidence to the Select Committee on Committee Work of the House  
from the Science and Technology Committee**

**HISTORY**

1. The Select Committee on Science and Technology was set up by the House in January 1980 on the recommendation of the Procedure Committee. The House of Commons Science and Technology Committee had ceased to exist following the establishment of the departmental select committee system in 1979. The House set up the Science and Technology Committee in preference to a proposal for an experimental Committee on Public Bills on the lines proposed originally by the *Select Committee on Practice and Procedure relating to Select Committees on Public Bills in 1977* (HL Deb, 1 Dec 1979, col 968).

**TERMS OF REFERENCE AND POWERS**

2. The Committee has the very broad terms of reference “to consider science and technology” (Appendix 1). In 1980 the Committee agreed an *Aide-Mémoire on the Role of the Committee* which set out its own interpretation of the terms of reference (Appendix 2). The General Purposes Sub-Committee re-considered the *Aide-Mémoire* on 20 November 1990 and re-affirmed their agreement to it.

3. The Committee’s power to appoint sub-committees was first exercised on 12 March 1980. Three sub-committees have been established and their work is described below. The Committee, unusually, has power to co-opt not only to sub-committees but to itself.

**MEMBERSHIP**

4. The Committee has always had 15 members named of the Committee and it currently has one co-opted member. Members of the Committee and its sub-committees are listed at Appendix 3. Members of the House who have at one time or another served on the Select Committee are listed at Appendix 4.

5. The party balance of the 16 members is currently four Conservatives, four Labour, two Liberal Democrat and six Cross-Bench. The fact that the Usual Channels are content to allow the appointment of a Committee with such broad membership is perhaps an indication of the non-partisan reputation of the Committee and the essentially apolitical nature, in party terms, of its work.

6. A considerable degree of continuity has been achieved in membership. The relative generosity of the five year rotation rule, the ability of chairmen of sub-committees to serve a further three years following appointment, and the power to co-opt, have enabled some members of the House to give many years of service—in some cases continuous—to the Committee, as Appendix 4 clearly illustrates.

7. New blood is eventually generated by the rotation rule. While appointment to the Committee is made by the Committee of Selection, the Whips’ Offices can be receptive to suggestions for membership from within the Committee. This co-operation, together with the Committee’s powers of co-option of additional members to sub-committees for the purposes of particular inquiries, makes for a high degree of appropriate expertise amongst members.

**STAFF**

8. The Select Committee has, at various times, been served by one to three Clerks. Currently it is served by two. Following a recommendation by the Group on the Working of the House in 1987, in 1988 a Specialist Assistant was appointed on an experimental basis for two years to assist the Committee. The first holder of this position was formerly a chemist with BP. His appointment was extended for a further year until October 1991.

9. The Specialist Assistant has proved invaluable in providing the Committee with improved briefing; in furnishing higher quality data and statistics to substantiate arguments advanced in reports; and in assisting the Clerks in specific areas. We strongly recommend that the position be made permanent and that future Assistants be appointed for periods of two years renewable for up to a further two years.

*1 July 1991]**[Continued]*

10. Specialist Advisers are appointed to assist sub-committees in conducting their major inquiries (Appendix 5). Specialist Advisers offer valuable assistance in defining and setting up inquiries and in highlighting important evidence as inquiries proceed. They are of less assistance in the drafting of reports and this task is still performed by the Clerks.

11. Each Clerk is supported by a Personal Secretary. The Committee also has the support of the shared clerical staff (one Executive Officer and two Clerical Officers) of the Committee Office.

12. The Committee considers that the high quality and dedication of its Clerks have been crucial to its success. Given this high quality, present staffing levels are adequate for the Committee's current level of activity. The occasional need to undertake additional inquiries at short notice (like that on the Science Budget) can impose some strain on staff, however. And there is no doubt that additional assistance—such as a refining and synthesis of the sometimes very considerable quantities of evidence (including technical and statistical evidence) which we receive—could be rendered to members were additional resources available. We have in mind here the possible part-time engagement, as a “Committee Assistant”, of a suitable post-graduate researcher studying for a Master's or Doctoral degree, or the attachment of a United States researcher. The Committee on Committee Work might wish to consider whether Select Committees should be encouraged to engage assistance of this kind on a short term basis, and what remuneration might be offered.

#### SPREADING THE WORKLOAD

13. The Committee operates in the main through its sub-committees. Sub-Committees I and II each consist of about half the members of the Select Committee. On average two to three additional members are co-opted by the Select Committee onto the sub-committees for specific inquiries. Sub-Committees I and II meet almost weekly. Given the size of our Committee, this level of activity is as much as members can sustain.

14. Sub-Committee III consists of about eight members of the Select Committee and meets once or twice a year to suggest topics for future inquiries, including follow-up inquiries.

15. The Select Committee meets, as required, to consider draft reports from sub-committees; to conduct follow-up inquiries; and very occasionally to receive formal or informal evidence relating to past inquiries but not immediately resulting in a report to the House. Thus in 1988–89 the Committee met 11 times and in 1989–90 six times. In the present session it has so far met nine times.

#### CHOICE OF SUBJECTS

16. The Select Committee has in the past decided on subjects for inquiry, following a preliminary deliberation by the General Purposes Sub-Committee (Sub-Committee III). For the future, it is likely the Select Committee will itself make the preliminary selection, and invite the General Purposes Sub-Committee to examine a number of options more closely for final decision by the Select Committee. A list of the Committee's inquiries may be found at Appendix 5. Principal inquiries are highlighted.

17. From Appendix 5, it will be readily apparent that the Committee has preferred in the past to concentrate its efforts on inquiries lasting up to 12 months each. Certain features emerge:

- (i) inquiries have incorporated a mix of science and politics;
- (ii) inquiries have mostly crossed the boundaries of two or more government departments;
- (iii) inquiries have tended to look at strategic and long term issues and have inclined to science policy rather than “hard technology assessment”;
- (iv) short term, politically charged subjects have on the whole been avoided;
- (v) inquiries have covered a wide range of science and technology. The only Government departments which have not yet been called to give evidence are the Law Officers' Departments, the Lord Chancellor's Department, and Customs and Excise.

18. More recently the Committee has shown itself prepared to engage in shorter inquiries in response to more immediate pressures. The report on the Nature Conservancy Council was produced in three months in 1989–90 in response to Government proposals for reorganisation. The report on the Science Budget 1991–92 was produced in five weeks in March of this year in response to widespread criticism of the level of the settlement and the effects of the apportionment of the budget on the work of the research councils.



*1 July 1991]**[Continued]*

19. A list of subjects which have been held over for consideration by the Select Committee for possible future inquiry is set out at Appendix 6. There are a number of important subjects to which the Committee could, with advantage, turn their attention.

#### WORKING METHODS

20. When the Select Committee chooses the subjects for future inquiry it also determines the composition of the sub-committees for the purposes of those inquiries. The sub-committees have power to appoint their own chairman but in practice chairmen are invited to serve at the invitation of the Chairman of the Select Committee, having regard to the subject matter of the relevant sub-committee.

21. Recently, the Select Committee has empowered the chairman designate of a sub-committee to appoint, in consultation with the Chairman of the Select Committee, a Specialist Adviser to assist in the first deliberative meeting of the sub-committee. This improves the quality of the planning of inquiries and ensures that the questions posed in invitations to give evidence are properly put.

22. The working methods of sub-committees I and II are mostly like those of any other select committee investigating policy issues. Unlike the European Communities Committee, the Science and Technology Committee publishes its oral evidence in weekly parts. Written evidence is, as of this year, published as soon as most of it has been received. This renders it more accessible to Members, the public, and other witnesses. Henceforward, weekly parts and any remaining written evidence will be published as a single volume of evidence to accompany the report.

#### REPORTS

23. Reports by the Committee are based firmly on the evidence which has been received. After agreement by the relevant sub-committee they are further considered and approved by the Select Committee and published. Where possible, publication is timed so that the scientific and other weekly journals are able to give coverage to a report. Science and other correspondents are given advance notice of publication, backed up by pre-publication copies of the report and a press notice. The Committee are considering ways in which publicity can be improved.

24. All Science and Technology Committee reports which result from major inquiries are deemed by the Committee to be worthy of debate by the House as a whole. The debate takes place on a motion to take note of the report, usually moved by the Chairman of the sub-committee which conducted the inquiry. The timing of the debate is subject to negotiation with the Government Whip's Office and is dependent upon the competing claims of other business, in particular of Government bills. Early in the session, time is more freely available. Later in the session time, though it is invariably found, can be "off-peak".

25. Regrettably, debates on Science and Technology Committee reports rarely attract speakers who are not also members or former members of the Select Committee and its sub-committees. For example, in a debate on 23 May on three Committee reports, of those speaking in the debate, only Lord Peston was not or had not been a member of one or other of the Committees. This may be due to the timing of debates which is not always ideal, or to the subject matter, or to the often formidable appearance and length of reports, or to possible reluctance on the part of Members of the House to focus on issues which may not be part of their own personal experience.

26. Hitherto, the taking up of Select Committee reports as subjects for Wednesday debates by the political parties has not been encouraged. Although such a development might make for wider participation, the Committee chairman would lose the right to move the motion on the Order Paper.

27. The Committee recommend that three days in each session be set aside for debates on any Select Committee reports on the lines of Estimates Days in the House of Commons.

#### REPLY AND FOLLOW-UP

28. Most, though not all, recommendations made by the Committee require action on the part of the Government. The Committee therefore attaches considerable importance to receiving the Government's comments upon its findings. In the first instance, it expects to receive a detailed written response from the Government in respect of each of its recommendations. Such a response may be published by the Government as a Command Paper. Responses which take the form of a memorandum to the Committee will be published by the Committee as a Report to the House.

*1 July 1991]**[Continued]*

29. Secondly, it will of course have received the more general reply of the minister in reply to the debate which normally takes place in the House some months after publication of the Report. Generally speaking, the Committee think that the balance of advantage lies in debating reports fairly soon after publication, while the written response is still being formulated. The formal Government response is not usually received for up to six months or more after publication. Indeed, when the subject matter of an inquiry concerns policy which is itself undergoing change within the Government, response time can be very protracted. For example, the Committee's report on agriculture and food research was made in December 1988 but the Command Paper in response did not appear until July 1990; the report on medical research was made in March 1988 but the Command Paper in reply did not appear until December 1989.

30. Thirdly, the Select Committee will itself follow up its inquiries. In some cases this will consist of taking evidence from a minister or other government witness on how things have developed since the original report was made to the House. Thus in May 1990 Mr Douglas Hogg MP, Minister for Industry and Enterprise at DTI, gave evidence on United Kingdom space policy following the Committee's own investigation of 1987. In other cases the Committee will reopen inquiries, summoning witnesses, inviting written evidence and agreeing a report which reassesses and if necessary reaffirms its original findings. Full scale follow-up investigations, published as supplementary reports, may be found amongst the list of Committee reports at Appendix 5. Follow up inquiries are carried out by the Select Committee itself with the co-option of those members of the sub-committee which conducted the original inquiry who may no longer be Committee members.

#### INFLUENCE

31. It is never easy to gauge the influence of select committees on the grounds that it is impossible to know whether changes ostensibly made in response to a committee report may not have been made in any event. Committee recommendations will be directed at Government, industry, the professions and other public bodies. For obvious reasons of parliamentary accountability, the response of Government to select committee reports is the best documented.

32. The Committee is able to exert influence on government in a number of ways:

- (i) The very fact that a select committee study is under way will force the Government to look at their own policy and ensure that it is defensible;
- (ii) The whole process of reporting to the House, debate, written response and follow-up requires the Government to reply to any criticisms which may have been levelled at them in the Committee's reports;
- (iii) Where formal exchanges with Government have yielded little, private negotiation between the chairman of sub-committees and Government have been known to succeed; and
- (iv) On occasion, amendments have been made to bills on the basis of Committee recommendations either by agreement or on division (eg Forestry Bill in 1981, Local Government Bill in 1985, Electricity Bill in 1989, Environmental Protection Bill in 1990), most of which survived in the Act.

33. A review of all the Committee's main reports, highlighting their principal recommendations and recommendations which led to a change in Government policy is to be found at Appendix 7. Generally speaking, the Committee's chief successes have lain in machinery of government and organisation of science. The further development of the position of Chief Scientific Adviser, the establishment of ACOST, the establishment of "collective Ministerial consideration, under the Prime Minister's leadership, of science and technology priorities" (ie by a Cabinet committee), the putting in place of the Annual Review of Government Funded R&D, and the triennial report of ACOST on future strategy, can all be associated with Committee recommendations. The granting of executive powers to ABRC accorded with the Committee's views. Recommendations to establish over-arching mechanisms to co-ordinate fragmented scientific endeavour have also generally been accepted, for example in marine science, on climate change and in nature conservancy and in the national health service. Recommendations involving additional public expenditure, or which stood counter to the Government's economic policies, have seldom been accepted however.

34. The Committee also senses that reports occasionally receive a wider, public, interest, though this is difficult to demonstrate. Some of the Committee's reports on machinery of government have been used as teaching manuals at universities. Reports have undoubtedly raised the public profile of certain science and technology issues, at home and overseas. And the evidential process on which our work is based often appears to stimulate and gratify witnesses who are relieved to have had an opportunity to put their case on an issue on which they feel strongly, and—if they give oral evidence—to have been listened to and questioned in a constructive way.



1 July 1991]

[Continued]

## RELATIONS WITH OTHER COMMITTEES OF THE HOUSE

35. The Committee is careful to avoid duplicating the work of the European Communities Committee and has in the past co-operated with that Committee in the scrutiny process. For example, in 1989–90 three members of the Science and Technology Committee joined members of Sub-Committee B in their consideration of the new EC framework programme.

36. The Committee has generally been able to contain its inquiries within the orders of reference which the House has given it. On occasion, however, we become conscious of other issues which largely lie outside our orders of reference but which ought nevertheless to be considered by Parliament. We think it desirable that such issues be examined by *ad hoc* select committees of the House and that a mechanism be found to facilitate this. The economics of sustainable development is such a subject and we are anxious that this be remitted to a select committee under *ad hoc* arrangements as soon as staff can be found to service it.

## RELATIONS WITH THE HOUSE OF COMMONS

37. Since its establishment, the Committee has been the only committee of either House to be concerned solely with Science and Technology issues. The Commons Procedure Committee's report on The Working of the Select Committee System (1989–90, HC 19–1) recommended either the setting up of a Joint Committee on Science and Technology or giving the Commons Education, Science and Arts Committee two additional members and the power to appoint a sub-committee. The Government agreed in May of this year to the establishment of a sub-committee of the Commons Education, Science and Arts (ESA) Committee "to examine science and technology issues". Two additional members are being appointed to the ESA Committee to facilitate this. In adopting this latter course, our Committee is aware that the procedural and practical difficulties of setting up a Joint Committee have been avoided.

38. The Science and Technology Committee has taken the view (8 May 1991) that no change is at present called for in its work to take account of these developments, though the situation will be kept under review. Every effort will, of course, be made to avoid duplication of activity, just as in the past the Committee has sought to avoid duplicating the work of the departmental select committees.

39. The Committee on Committee Work should be aware of a further development in the House of Commons. The Parliamentary Office of Science and Technology, a privately funded think tank performing "technology assessment" on issues of interest to members of both Houses, has requested public funding from the Leaders of the two Houses. The Commons Services Committee has agreed in principle that some measure of funding is desirable and proposes to conduct a survey of MPs on the use they make of POST. The Committee on Committee Work may wish to consider whether, if the Commons grant money to POST, this House should follow; the means whereby the work of POST would be integrated into that of existing select committees, and the House as a whole; and how the present work of and expenditure upon our existing committees might be affected.

## SUMMARY AND FORWARD LOOK

## 40. The Select Committee on Science and Technology:

- (i) is content with its powers and finds that its method of applying them as set out in the *Aide-Mémoire* remains valid (para 2);
- (ii) is content with its present staffing levels, subject only to the permanent establishment of the post of Specialist Assistant and to some additional temporary assistance at relatively junior level (paras 9 and 12);
- (iii) is adjusting the way in which subjects for future inquiry are selected (para 16);
- (iv) is increasingly prepared to undertake shorter inquiries (para 18);
- (v) has recently taken steps to secure the early appointment of Specialist Advisers so as to get inquiries off on the right footing (para 21);
- (vi) is unhappy with the low level of participation by non-committee members in debates and with the timing of debates. We propose the setting aside of some three days each session for debates on reports of Select Committees (paras 25 and 27);
- (vii) suggests that a mechanism be found to facilitate the setting up of *ad hoc* select committees to consider subjects (like the economics of sustainable development) which lie beyond the Committee's orders of reference (para 36);
- (viii) proposes to keep under review the work of the Commons Sub-Committee (para 38); and
- (ix) looks forward to a period of high activity and interest in coming sessions given the increasing number of demanding S&T issues that merit scrutiny by Parliament (Appendix 6).

1 July 1991]

[Continued]

## APPENDIX 1

†Science and Technology—THE CHAIRMAN OF COMMITTEES to move, That a Select Committee be appointed to consider Science and Technology and that, as proposed by the Committee of Selection, the following Lords be named of the Select Committee:

Adrian, L	Kearton, L
Butterworth, L	Kirkwood, L
Caldecote, V	Nicol, B
Carver, L	Platt of Writtle, B
Clitheroe, L	Shackleton, L
Dainton, L	Taylor of Blackburn, L
Flowers, L (Chairman)	Whaddon, L
Gregson, L	

That the Committee has power to appoint Sub-Committees and that such Sub-Committees have power to appoint their own Chairman;

That the Committee has power to co-opt any Lord for the purposes of serving on the Committee or any Sub-Committee;

That the Committee has leave to report from time to time;

That the Committee and any Sub-Committee have power to adjourn from place to place;

That the Minutes of Evidence taken before the Committee or any Sub-Committee from time to time be printed and, if the Committee thinks fit, be delivered out;

That the Committee and any Sub-Committee have power to appoint specialist advisers.

## APPENDIX 2

**Aide-Mémoire on the Role of the Select Committee on Science and Technology**

The Committee's terms of reference are to consider science and technology.

Within this field, the Committee's function is:

- (a) to carry out inquiries into matters with which Parliament ought to be concerned, and
- (b) to report to the House.

Reports can be the result of detailed study or, if need be, they can be made without detailed study in order to recommend a subject of urgent importance for debate.

Subjects for inquiry should concern one or more of the following areas:

- (1) areas where Parliament can help and stimulate the advancement and application of science and technology in the United Kingdom;
- (2) aspects of science and technology in which the Government are, or should be, involved;
- (3) the work of statutory bodies involved in science and technology;
- (4) areas where the interests of the public and the interests of science and technology may possibly conflict;
- (5) areas where there is a degree of public concern over issues of science and technology.

In choosing subjects, the Committee will be selective; and they will pay special attention to the applications of science and technology, in order to identify issues likely to be of political significance.

The Committee should not:

- (a) choose subjects where the scientific or technological aspect is clearly subsidiary to other considerations;
- (b) choose subjects so wide that they are beyond the Committee's capability in terms of time and resources;
- (c) act as a channel of generalised information and education on science and technology between Parliament and the public.

The Committee should be prepared to look again at these guidelines in the light of experience.



*1 July 1991]**[Continued*

## APPENDIX 3

**List of Members and Co-opted Members of the Select Committee on Science and Technology  
and Sub-Committees, June 1991**

## SCIENCE AND TECHNOLOGY COMMITTEE

Adrian, L  
Butterworth, L  
Caldecote, V  
Carver, L  
Clitheroe, L  
Dainton, L  
Flowers, L (Chairman)  
Gregson, L  
Kearton, L  
Kirkwood, L  
Nicol, B  
Platt of Writtle, B  
Shackleton, L  
Taylor of Blackburn, L  
Whaddon, L

*Co-opted Member*

Porter of Luddenham, L

## SUB-COMMITTEE I—SAFETY ASPECTS OF SHIP DESIGN AND TECHNOLOGY

Caldecote, V  
Carver, L (Chairman)  
Clitheroe, L  
Flowers, L  
Gregson, L  
Kearton, L  
Kirkwood, L  
Platt of Writtle, B  
Shackleton, L

*Co-opted Members*

Geddes, L  
Marshall of Goring, L

## SUB-COMMITTEE II—SYSTEMATIC BIOLOGY RESEARCH IN THE UNITED KINGDOM

Adrian, L  
Butterworth, L  
Dainton, L (Chairman)  
Flowers, L  
Nicol, B  
Porter of Luddenham, L  
Taylor of Blackburn, L  
Whaddon, L

*Co-opted Members*

Cranbrook, E  
Selborne, E  
Walton of Detchant, L

## SUB-COMMITTEE III—GENERAL PURPOSES

Adrian, L  
Butterworth, L  
Caldecote, V  
Carver, L  
Dainton, L  
Flowers, L (Chairman)  
Gregson, L  
Porter of Luddenham, L  
Shackleton, L

1 July 1991]

[Continued

## APPENDIX 4

\* Current member

† Died

## Membership of Select Committee on Science and Technology 1979–80 to 1990–91

* Adrian, L	79–80, 80–81, 81–82, 82–83, 83–84, 87–88, 88–89, 89–90, 90–91
Ashby, L	79–80, 80–81
Avebury, L	79–80, 80–81, 81–82, 82–83
Beloff, L	81–82
Bessborough, E	79–80, 80–81, 81–82, 83–84
Blakenham, V	84–85, 85–86, 87–88 (resigned Feb 88)
* Butterworth, L	86–87, 87–88, 88–89, 89–90, 90–91
* Caldecote, V	79–80, 80–81, 87–88 (Mar), 88–89, 89–90, 90–91
* Carver, L	84–85, 85–86, 86–87, 87–88, 88–89, 89–90, 90–91
* Clitheroe, L	88–89, 89–90, 90–91
Cranbrook, E	79–80, 80–81, 81–82, 82–83, 83–84, 84–85, 85–86
* Dainton, L	89–90, 90–91
Erroll of Hale, L	85–86, 86–87, 87–88, 88–89, 89–90
* Flowers, L	82–83, 83–84, 84–85, 85–86, 86–87, 87–88 (co-opted), 88–89, 89–90 (Chairman), 90–91 (Chairman)
* Gregson, L	79–80, 80–81, 81–82, 82–83, 83–84, 84–85, 85–86, 86–87 (co-opted), 87–88 (co-opted), 88–89 (co-opted), 89–90, 90–91
Hunter of Newington, L	82–83, 83–84, 84–85, 85–86, 86–87
Ilchester, E	84–85, 85–86, 86–87, 87–88, 88–89
Jeger, B	79–80, 80–81, 81–82, 82–83, 83–84
* Kearton, L	85–86 (co-opted), 86–87 (co-opted), 87–88, 88–89, 89–90, 90–91
* Kirkwood, L	87–88, 88–89, 89–90, 90–91
† Lloyd of Kilgerran, L	79–80, 80–81, 81–82, 82–83, 83–84
Lockwood, B	84–85, 85–86, 86–87, 87–88, 88–89
Lucas of Chilworth, L	79–80, 80–81, 81–82, 82–83
Melchett, L	82–83, 83–84, 84–85
Nelson of Stafford, L	83–84, 84–85, 86–87, 87–88, 88–89 (co-opted), 89–90 (co-opted)
* Nicol, B	89–90, 90–91
Perry of Walton, L	84–85, 85–86, 86–87, 87–88, 88–89
Platt of Writtle, B	82–83, 83–84, 84–85, 90–91
† Ritchie-Calder	79–80, 80–81, 81–82
Schon, L	79–80, 80–81, 81–82
* Shackleton, L	79–80, 80–81, 81–82, 82–83, 83–84, 84–85 (co-opted), 85–86 (co-opted), 86–87, 87–88 (Chairman), 88–89 (Chairman), 89–90, 90–91
Sherfield, L	79–80, 80–81, 81–82, 82–83, 83–84, 84–85 (Chairman), 85–86 (Chairman), 86–87 (Chairman), 87–88 (co-opted), 88–89 (co-opted), 89–90 (co-opted)
* Taylor of Blackburn, L	86–87, 87–88, 88–89, 89–90, 90–91
Todd, L	79–80 (Chairman), 80–81, 81–82, 82–83, 83–84
Tordoff, L	82–83, 83–84, 84–85, 85–86, 86–87
* Whaddon	89–90, 90–91
White, B	84–85, 85–86, 86–87, 87–88, 88–89



1 July 1991]

[Continued

## APPENDIX 5

## Principal Inquiries of the Science and Technology Committee

<i>Session</i>	<i>Subject</i>	<i>Chairman</i>	<i>HL No</i>	<i>Specialist Adviser(s)</i>
1979–80	Electric Vehicles	L Gregson	352	Prof B M Bird
1979–80	Scientific Aspects of Forestry	L Sherfield	381	Prof M E Poore
1980–81	Hazardous Waste Disposal	L Gregson	273	Prof P C G Isaac Prof N A Warner Mr K Russell
1981–82	Science and Government	L Sherfield	20	Dr P T Warren
1981–82	Electric Vehicles, Supplementary Report			
1981–82	Scientific Aspects of Forestry, Supplementary Report			
1982–83	Engineering Research and Development	L Gregson	89	Dr P H G Allen Dr P E Trier CBE Mr K L R Pavitt Mr T G R Lawrence
1982–83	The Water Industry	L Sherfield	47	Prof P C G Isaac
1983–84	Remote Sensing and Digital Mapping	L Shackleton	98	Prof D W Rhind
1983–84	Occupational Health and Hygiene Services	L Gregson	99	Prof J M Harrington
1983–84	Engineering Research and Development, Supplementary Report			
1983–84	Agricultural and Environmental Research	L Adrian	272	Prof P C Smith Prof J L Harper
1984–85	Education and Training for New Technologies	L Gregson	48	Sir James Hamilton Dr M J Denham
1984–85	Local Government Bill— Scientific and Technical Services, Interim Report			
1984–85	Hazardous Waste Disposal: Review of the Control of Pollution (Special Waste) Regulations 1980			
1985–86	Science and Technology in Local Government	E Cranbrook	11	Mr K Spencer Prof A D May Mr L Davey
1985–86	Marine Science and Technology	L Gregson	47	Prof H Charnock Prof E Naylor
1986–87	Civil Research and Development	L Sherfield	20	Sir John Charnley Prof R Williams
1986–87	Innovation in Surface Transport	L Nelson of Stafford	57	Prof A D May
1987–88	United Kingdom Space Policy	L Shackleton	41	Prof R Williams Mr R D Hardy
1987–88	Priorities in Medical Research	L Nelson of Stafford	54	Prof W W Holland Prof J Butterfield
1987–88	Agricultural and Food Research, Interim Report			
1988–89	Agricultural and Food Research	L Butterworth	13	Dr A T James Prof J Harley

1 July 1991]

[Continued

<i>Session</i>	<i>Subject</i>	<i>Chairman</i>	<i>HL No</i>	<i>Specialist Adviser(s)</i>
1988–89	R & D in Nuclear Power	L Nelson of Stafford	14	Sir John Hill Prof R Williams
1988–89	Definitions of R & D	L Carver	44	Prof R Williams
1988–89	Greenhouse Effect	L Carver	88	Mr A Gilchrist Prof H Charnock Prof M H Unsworth
1989–90	Overseas Aid	V Caldecote	16	Mr A Barnett
1989–90	Nature Conservancy Council	L Carver	33	
1989–90	Priorities in Medical Research, Supplementary Report			
1990–91	Innovation in Manufacturing Industry	V Caldecote	18	Mr O Roith Prof R Rothwell
1990–91	International Scientific Programmes	L Carver	24	Dr M Lomer Prof R Williams
1990–91	Science Budget 1991–92	L Flowers	37	Prof R Williams
<i>Inquiries in Progress</i>				
1990–91	Safety Aspects of Ship Design and Technology	L Carver		Prof G Price Capt G J Botterill Capt J Corse
1990–91	Systematic Biology Research	L Dainton		Prof W Chaloner Prof M Claridge

## APPENDIX 6

## SELECT COMMITTEE ON SCIENCE AND TECHNOLOGY

## Suggestions for Future Inquiries

- Technology in the National Curriculum
- R & D of Computer Software
- High School Science
- Contribution of Inward Investors to United Kingdom R & D
- Supply of Scientific Manpower—numbers, careers, rewards
- Recovery and Recycling of Waste
- Criteria for the Support of Basic Research
- Role of Industrial Research Establishments
- Broad Band Technology
- Defence R & D—Civil Applications
- Agriculture and Food Research: Follow up
- Medical Research: Follow up
- Forensic Science
- Environmental law
- Taxation of Scientific Equipment
- Intellectual Property Rights
- Networking (part of a study of high speed communications)
- Combined Heat and Power
- Veterinary Training



*1 July 1991]**[Continued]***APPENDIX 7****Brief review of all the main reports of the Science and Technology Committee****1980 ELECTRIC VEHICLES**

This endorsed the Government's line on electric vehicles, that the technology should be kept under review.

**1980 SCIENTIFIC ASPECTS OF FORESTRY**

As a result of the Committee's recommendations to bring the applied research of the Forestry Commission and the basic research of other bodies together, the Forestry Research Co-ordinating Committee was set up. The Committee argued for a long term policy on broad leaved woodlands with different treatment for those deserving conservation and those deserving exploitation: the outcome was a new policy Broadleaves in Britain. The idea of "community woodlands" was implemented. NERC was given the lead on forestry among the Research Councils. The Committee recommended better integration between forestry and other competing land uses.

**1981 HAZARDOUS WASTE DISPOSAL**

The Committee demanded improved control of hazardous waste disposal, especially through the regulation of carriers and the aftercare of sites, and crystallised the requirement for public confidence in waste disposal. The recommendation for a Hazardous Waste Inspectorate was accepted, as was the recommendation that waste disposal contractors, not ratepayers, should pay for the control and monitoring of sites. The recommendations for planning for waste disposal and scientific services on a regional basis were not implemented.

**1981 SCIENCE AND GOVERNMENT**

This enquiry into the provision of scientific advice to Government resulted in the Annual Review of Government-Funded R & D, a horizontal rather than vertical look at Government spending, a strengthened Cabinet Office scientific secretariat and the interdepartmental Committee of Chief Scientists. The recommendations for a Council for Science and Technology and a Minister to speak for science and technology were not accepted.

**1982 WATER INDUSTRY**

The review of water supply and sewerage services resulted in the implementation of the Reservoirs Act 1975 which had been shelved previously, and DOE accepted responsibility for ensuring the existence of a long-term strategy in the water industry. The Committee's identification of the need for large capital investment in water mains and sewers was accepted as authoritative in papers in the industry for some years.

**1982 ENGINEERING R & D**

The Committee recommended a national strategy for technology in partnership between the Government, public purchasing bodies and manufacturing industries, coupled with selectivity and increased support for innovation. Overtly the Government rejected this though the policy was implemented in the Alvey Programme. The Committee recommended the disclosure of R & D expenditure in company accounts.

**1983 REMOTE SENSING AND DIGITAL MAPPING**

The Committee strongly supported the development of remote sensing and the Government accepted the recommendation that a communications network for the distribution of spatial data should be built up, based at Farnborough. The digitisation of Ordnance Survey map data was speeded up but not as fast as the Committee recommended. DOE accepted the recommendation to set up a committee of enquiry into the handling of geographical information; this became the Chorley Committee.

**1983 OCCUPATIONAL HEALTH AND HYGIENE SERVICES**

The Committee recommended the HSE to draw up voluntary codes of practice for occupational health and hygiene in all work places—the HSE accepted this. The Committee recommended an expanded role for GPs in occupational health and hygiene and the introduction of occupational medicine into medical training on a regular basis. The Government broadly accepted this.

*1 July 1991]**[Continued]***1984 AGRICULTURAL AND ENVIRONMENTAL RESEARCH**

The Committee recommended greater co-ordination between the Government Departments and between the Research Councils involved in agricultural and environmental research. The Committee recommended that the Agriculture Departments should accept an obligation towards the whole environment. These were accepted, as, on a small scale, was the proposal for a network of projects to monitor the ecological effects of agricultural practice.

**1984 EDUCATION AND TRAINING FOR NEW TECHNOLOGIES**

The Government accepted the Committee's analysis of the need to increase the provision of people broadly trained and qualified to exploit new technologies as they emerged but rejected most of the proposals for action, including the central recommendations for an Education and Training Board within SERC and a national training levy.

**1985 LOCAL GOVERNMENT—SCIENTIFIC AND TECHNICAL SERVICES**

In the context of the Local Government Bill abolishing the GLC and metropolitan councils, the Committee argued for a mechanism to keep the scientific and technical services of those councils in being pending the agreement of long-term arrangements. The Committee also argued for single service waste disposal authorities for hazardous waste control. The Committee largely achieved the former and tipped the balance in favour of the latter in London (through defeating the Government in Committee on the Bill).

**1985 SCIENCE AND TECHNOLOGY IN LOCAL GOVERNMENT**

This review of the scientific and technical services of local government, of which the previous report was an off-shoot, looked at the environmental health, transport and information technology sectors of local government. The report aimed to raise local authorities' awareness of the potential of science and technology and to increase the quality of their scientific and technical services. The direct results were probably few, the indirect consequences unidentifiable (not least because action depended on individual local authorities and the ordinary form of Government response was unsuitable).

**1985 MARINE SCIENCE AND TECHNOLOGY**

The Committee identified fragmentation and lack of funds at the heart of United Kingdom policy for marine science and technology and the result was the appointment by the Government of the Co-ordinating Committee for Marine Science and Technology (CCMST) to develop a national perspective for marine science and technology. In their response to the report of CCMST, the Government agreed to set up an inter-agency committee with membership drawn from relevant Government departments and Research Councils to monitor developments in marine science. Although HEIs and industry interests will be represented only indirectly, the proposal broadly accords with the Select Committee's recommendation for the establishment of a Marine Board.

**1986 CIVIL R & D**

This was a second look at Science and Government (1981). Its recommendations included the need to strengthen science and technology at the centre of Government and at the heart of Government policy. The Committee recommended again a Council of Science and Technology, now to be chaired periodically by the Prime Minister; evolution towards a single Research Council; an executive role for the ABRC; support for the customer/contractor principle with the revival of the Rothschild 10 per cent surcharge; and a new process for Exploitable Areas of Science. The results included the appointment of ACOST, periodically meeting with the Prime Minister; collective ministerial consideration, under the Prime Minister's leadership, of science and technology priorities (that is to say, by a Cabinet Committee); and (not as direct cause and effect) the Centre for the Exploitation of Science and Technology (CEST). In 1990, following a report by an ABRC working party, the Government rejected the idea of a single research council but increased ABRC's executive functions and required ABRC to promote collaboration between research councils, thus fulfilling the spirit of the Committee's recommendation. The Committee's recommendation that ACOST lay an annual report before Parliament was not taken up.

**1986 INNOVATION IN SURFACE TRANSPORT**

Tangible results of this enquiry were few but included the introduction for the first time of a Rothschild surcharge (5 per cent not 10 per cent) at TRRL. The Secretary of State said he would think about the recommendation for a Transport Industries Advisory Council.



*1 July 1991]**[Continued]***1987 UNITED KINGDOM SPACE POLICY**

The Committee called for a clear statement of Government policy and set out the principles on which it should be based. They called for more leadership by the Government, for collaboration with ESA and for more money. It is believed that the Government's policy and its agreement to join the Columbus Project were both more favourable towards space as a result of the enquiry than would have been the case without it and Ministers at DTI have been more sympathetic since the departure of Mr Clarke. The amount of money for United Kingdom space policy was also increased though by much less than the Committee recommended.

**1987 PRIORITIES IN MEDICAL RESEARCH**

The Committee recommended that the NHS should be brought into the mainstream of medical research: it should articulate its research needs; it should assist in meeting those needs; and it should ensure that the fruits of research are systematically transferred into service. The mechanism proposed by the Committee for delivering this end—the establishment of a National Health Research Authority—was not taken up but the Committee's pressure, both before the Government response was published and afterwards when the Secretary of State for Health was called to give further evidence, resulted in the appointment of a full time Director of Research and Development advising both the Department and the NHS, responsible for directing their research programmes, and integrated into the Management Executive of the NHS. Another successful recommendation was that NHS funding for teaching hospitals should include a special increment for research as well as teaching.

**1988 AGRICULTURAL AND FOOD RESEARCH (INTERIM)**

The Committee recommended merging the AFRC and NERC into a Natural Resources Research Council. Following a report by an ABRC working party, the Government rejected any change in existing research council structure.

**1988 AGRICULTURAL AND FOOD RESEARCH**

The report made recommendations on Government near-market research policy and the need to maintain "public good" research. It recommended a transfer back to the AFRC (NRRC) of 75 per cent of the money transferred to MAFF following the Rothschild report. Other recommendations proposed an integrated research service between AFRC and ADAS and more research on set-aside and other agricultural/environmental issues. The Government initiated an internal review of the way in which MAFF discharged its role as an "intelligent customer", taking account of the Committee's views. The recommendations on public good, agricultural/environmental, and set-aside research were accepted. Merger of AFRC and ADAS was rejected.

**1988 R & D IN NUCLEAR POWER**

The Committee's recommendation that the Government should ensure long-term R & D for the electricity supply industry after privatisation was implemented in the Electricity Bill. The Committee's support for the fast reactor through the European programme coincided with the Government's policy whereas the recommendation for keeping Dounreay open was rejected.

**1989 HAZARDOUS WASTE DISPOSAL**

This second report on hazardous waste disposal made further recommendations on regional grouping of waste disposal authorities with which the Government agreed in principle, though the idea of giving regional groupings formal powers was rejected. Proposals for new statutory arrangements for centralising waste disposal in London and the metropolitan counties, and for registration of producers of hazardous waste were rejected.

**1989 GREENHOUSE EFFECT**

The inquiry was mainly concerned to assess the known facts about fears of global warming and to identify areas where further research was required. The Government were in broad agreement with the Committee's assessment, including the need to support specific projects. The Committee's recommendation that an ABRC review group be set up to co-ordinate research was met by the setting up of an Inter-Agency Committee; a recommendation for the establishment of a National Centre for Climate Modelling at the Met Office was met by the announcement of the Climate Prediction Programme shortly after the Committee had reported.

**1990 OVERSEAS AID**

The Committee's principal findings were that aid was primarily for the benefit of the recipients; that present levels of United Kingdom aid, at 0.29 per cent of GNP, was inadequate and should move towards the OECD target of 0.7 per cent as soon as possible; that S & T pervaded most areas of aid and was a particularly effective

1 July 1991]

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way of promoting development; and that the S & T input was effective and well managed. A large number of specific recommendations on various aspects of the aid programme were made. The Government accepted the Committee's analysis—including the aid target of 0·7 per cent of GDP—but was on the whole defensive of its existing policies, in particular of ODA. Recommendations that ODA should maintain a constant level of support for S & T and appoint an advisory panel of experts on S & T applications were not accepted, for example.

#### 1990 NATURE CONSERVANCY COUNCIL

The Committee recommended that, following the division of the Nature Conservancy Council into three country councils, each council should have a strong science base; and the joint committee which had already been proposed by the Government to address "United Kingdom" conservation issues, including research, be strengthened in various ways. The Committee's recommendations were nearly all accepted and embodied in the Environmental Protection Bill. In particular the Committee was given an independent chairman, independent members appointed for their scientific excellence, and a scientific staff of its own.

#### 1990 DEFINITIONS OF R & D

The Committee recommended various amendments to the "Frascati" definitions of R & D and the disaggregation of R from D in accounting standard SSAP13 which the Government forwarded to OECD for consideration as part of their current review. The Committee's principal recommendation, that MoD should categorise R & D according to Frascati definitions, met with sympathy and the promise that some beneficial results may accrue from internal MoD reviews currently under way. A request that NAO report on MoD R & D expenditure has been taken up by NAO and their findings are awaited. The Committee's "major lesson", that too little is spent on civil R & D, was noted but not agreed with.

#### 1990 CIVIL R & D

The Committee's principal recommendation was that ACOST should periodically lay before Parliament an assessment of progress and priorities in S & T. This repeated a similar recommendation made in 1986. Following exchanges between the Chairman of the Select Committee and the Prime Minister, the Government agreed that such a report be prepared and published by ACOST every three years "early in the time of an incoming chairman". Although the report like other ACOST reports would be made to Government, it would be available to Parliament.

1991 Innovation in Manufacturing Industry

1991 International Scientific Programmes

1991 Science Budget

Government response not yet received.

### Examination of witnesses

LORD FLOWERS, Chairman of the Select Committee on Science and Technology, a Member of the House, examined; and DR R H WALTERS, Clerk of the Committee, called in and examined.

#### Chairman

72. Lord Flowers, on behalf of the Committee I should like to welcome you and Dr Walters on behalf of the Select Committee on Science and Technology to this meeting. I cannot refrain from remembering making some visits to various scientific establishments with you donkey's years ago, and more recently I cannot help recalling coming up before you as a humble Chairman of Council of one of your colleges when you were Vice-Chancellor of the University of London. I am very glad now to extend a welcome to you on behalf of the very distinguished Lords Select Committee on Science and Technology. At the same time I should like to thank you for your evidence, which I think we have all found very helpful. Before we ask you a number of questions—and I think that you have a fair knowledge of some of the things that we have in mind to ask you—I wonder whether there are any introductory remarks that you would like to make?

(Lord Flowers) Thank you, my Lord Chairman. It is a novelty for me after all these years to be on this side, but I suppose that it is good for the soul. You have referred to the evidence that we have sent you. I shall be glad if you find it helpful. I should like to say that that evidence was contributed to and approved by the whole of the Select Committee, that is to say, 100 per cent of them who were there, and the rest sent in written comments and agreements. May I say that we are a distinguished committee and I feel extremely honoured to chair it. We are dedicated to bringing matters of science and technology before Parliament when that seems appropriate. To that extent, of course, all subjects that we treat should be topical, but we may have to work quite hard to make them topical at times; that is to say, we feel that sometimes we have to bring an issue before Parliament that it did not know about but which we thought that it should. When talking about issues of science and technology,



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

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[Chairman *Contd*]

we are really, of course, not doing science and technology; we are doing the policy connected with science and technology. When we take evidence, we take enough evidence about the science and the technology issue to know what it is we are talking about and to know what some of the problems are, but thereafter we are concerned with whatever the policy issues are, and sometimes the political issues are very sensitive. So I think that it would be wrong to imagine that it is our intent to bring extremely complicated matters before the House. We try to avoid doing that. We may have to deal with extremely complicated matters in the course of taking our evidence, but we try to distil it into issues that are comprehensible by perhaps not the man in the street but the man in the House and distil out the policy issues. That at least is the attempt. Many committee members work very hard indeed, especially the chairmen of the sub-committees. There is a lot of technical evidence. Often we have to steer our way through some very confused responsibilities on the part of Government or whoever, sometimes local authorities. We regard ourselves—at least, I regard us—as a committee of experts, not an expert *committee* of experts, if you see what I mean by the difference. Each of us is expert in something, be it being a cabinet minister or being a physicist in a laboratory, but we are not as a committee, an expert committee, expert in any particular thing. The coverage of science and technology and all its implications is so broad that of course we could not be an expert committee in all of that. Partly for that reason it is most helpful when some of our membership consists of senior non-scientists, if I may put it like that. A former cabinet minister who has had as part of his responsibilities dealing with scientific or technical issues at some time or other can be a very useful person to us, and likewise a senior civil servant. Indeed, some of our members are just like that. Lord Sherfield was head of the Treasury and until recently was one of the most stalwart and influential members of the Committee, certainly one of the most hardworking. Lord Carver you could hardly call a scientist; from our point of view he is a generalist, but he makes a magnificent contribution to the work of the Committee. Lord Shackleton has had great experience of government, and so on. The names are before you in our evidence. You will see that they are far from all being scientists. Indeed, if you look at those who actually are scientists in the sense that they have worked as scientists for a respectable number of years and maybe got FRSS or something for it, very few of them are actually practising scientists or engineers now. They have moved off into policy issues or even political issues. May I say in passing without making too much about it but very sincerely that we are very indebted—and the Select Committee wanted me to say this strongly—to our small but excellent staff. Perhaps you will wish to talk about the staff at a later stage. I will be very happy to do so, but I did want to say that in my introductory remarks. They are excellent. I have had a lot of experience of committee staff through chairing Royal Commissions and things like that. They are about half the number that one would

associate, for instance, with a Royal Commission whose working methods are not very dissimilar, and they are very good. So far as the past is concerned, my Lord Chairman, I will not say anything about it in these remarks except to say that our reports are available to you and are the evidence on which we rest our case. I think that they are mostly regarded as very workmanlike documents. I was not responsible for any of them—one now, of course—though I took part in some. As far as the future is concerned there is a wealth of suitable topics, important topics, topics where there are political as well as scientific issues, and choice will be a problem. Secondly, during the ten years or so of the Committee's existence we have worked really only with a Thatcherite government, and only recently has there been a change in that and we have not yet experienced that change. We shall, of course. We have not experienced a government from the other side of the House at all. I do not know whether what we do will prove more or less useful, whether we shall continue in exactly the same way or not as a result of changes in government. That is something to be tested. Likewise, for reasons that you already know, our relations with the Commons have been rather easy. Provided that we did not tread on the toes of one of the departmental committees in the Commons or they did not tread on our toes there was no problem, and I think the Commons have found our work useful to them. Now that they have a sub-committee of their own dealing with science and technology that will inevitably produce some kind of change for us too. We do not know what that will be although I imagine that it will be much the same as the state of affairs that we had when we were doing our study of the greenhouse effect and the Energy Committee of the Commons were doing their study of the greenhouse effect. It was quite easy to arrange. They would concentrate on policy issues that the greenhouse effect suggested in things like energy conservation while steering clear of the scientific aspects of it, whereas we would concentrate on the scientific basis for policy decision on the greenhouse effect—what was the evidence for the greenhouse effect increasing, what was the reliability of the forecasts that in 30 years' time things would be worse than they are by so much, and so on. The two studies were entirely complementary. I do not know whether that could be the case in general working with the Commons, but it would be the sort of thing that we would attempt to bring about if we could, and the future will speak for itself. Finally may I just say two things by way of introduction. First, we really must find a better way of handling debates on select committee reports. The usual channels are under such pressure at certain times of the year that by themselves operating as they are, if I may say so without wishing to cause offence to them, they do not seem adequate for the task apart from handling government business, which of course I suppose they see as their first priority. I do not want to say any more about that at the moment unless you want to question me. It does seem to me that guidance from this committee to the usual channels of some kind about how to handle select committee reports is desirable. It seems to me unreasonable that the



[Chairman *Contd*]

debate proposed by a single peer or maybe a small group of peers into an interesting subject should always have preference over a debate proposed by the chairman of a select committee who, with his band of 15 or so hard-working peers and staff, has worked for nine months or a year and produced a highly comprehensive, perhaps controversial but anyway discussible, report. It does seem to me that there is something wrong with the balance, and guidance from this committee could be extremely valuable. We are conscious sometimes that there are topics that we would like to have studied but that we know are sufficiently beyond our terms of reference that it would be wrong for us to do so. I am sure that other select committees probably feel the same. As you know, I have had a hand in urging the creation of an *ad hoc* committee on the economics of sustainable development, something where there is undoubtedly a scientific input, but the main issue is not scientific in the usual sense but more economic. I also think that there is a case for, perhaps not an *ad hoc* committee, but even a standing committee on the environmental implications of public bills. It would be quite interesting, I think, to set one up for a trial period to see whether such a body would have a contribution to make of a genuine standing nature. I suspect that it might. My Lord Chairman, I have probably spoken too long, but those are the points that I wanted to put before you right at the beginning. I am willing to answer any questions that I can.

73. Thank you very much, Lord Flowers, for some very interesting introductory remarks. I am quite certain that there are one or two specific points we would like to follow up. For example, at a later stage we might get your views on staffing. I am sure that it will be no bad thing to explore together the question of governmental treatment of your reports and how they should be debated and taken on the floor of the House and so on. I should also very much like the opportunity, as I am sure my colleagues in the committee would, of touching on the question that you have raised of setting up *ad hoc* select committees and also the possibility or the desirability of a standing committee dealing with the environmental impact of Bills coming before us. Those are both matters that I think we should very much like to explore with you. Before doing so, I think that there may be some more general topics that we would like to discuss. If I may I should like to open the bowling by asking you what is your own view of the impact of the committees' work, the committee's reports, over the last ten years or so. You have touched on that very frankly and usefully in your paper. As I understand it, you can justifiably claim to have made a not insignificant impact on government thinking on the organisation and administration, as it were, of science in this country, the strengthening of the science section, or whatever it is called, of the Cabinet Office and so on. I know that you have had other successes, some which are very clear in my own mind. One was the impact of the sub-committee that Lord Nelson chaired on priorities in medical research. I am well aware from my ex-position as chairman of the Medical Research Council of the influence that that report had. Likewise I am pretty well aware of the

impact of the report on marine science which Lord Gregson, I think, chaired. I feel personally indebted to that as Chancellor of the University of Southampton because it played a not inconsiderable part in the decision to establish a national centre for deep sea oceanography at Southampton. In your evidence you have alluded to other areas where your reports have had a real impact and others where they have had less impact. Is there anything further that you would like to add to that? Is there a danger that you are preaching to the converted? I know, for example, how highly your work is regarded by the Royal Society. That is the converted. I was wondering about the wider ripples that you have been able to send out?

(*Lord Flowers*) It is a very difficult question to judge what influence we have really had. Historians would say that you should not do it for 50 years probably, and I do think that it is that kind of a question. I think that one may accept the praise, if that is what it gets, of the Royal Society and other professional bodies, the Institution of Mechanical Engineers or suchlike. One can accept that praise, I think, as an indication that from their point of view we have got it about right. However, let me take the Royal Society since I am a fellow of it and therefore can be disparaging if I wish to be. The fact that it is an expert body does not mean that it is able to judge a report of ours adequately. The Royal Society on the whole does not consist of people who are used to handling policy issues; it is not their chief job. Some of them are, of course. On the Council of the Royal Society, which is the only body that can make pronouncements on behalf of the Society, you will not usually find many people who are used to dealing with the interplay between science and policy issues. Although I am happy when they praise us, it does not necessarily mean that we have done a good job. I think therefore that we must be judged by criteria other than just the scientific ones because, as I said at the beginning, our job is not to do science; it is to do scientific and technological policy, the interplay between science and politics. I take more seriously the fact that, if I may put it this way, the House is rather loyal to amendments arising from our reports to legislation that is before it. It does not happen all that often, but when it does it is noticeable that the House seems to treat rather warmly such amendments. As to whether our reports appeal to the House and, if they did, would we be more influential within Parliament, that I find a very difficult question to deal with. It is not quite what you asked, but perhaps I may deal with it now nevertheless. I think that it is disappointing that very often when a report of ours is debated the majority of those who take part in the majority of such debates are people who have been associated with drawing up that report or who have been members of the select committee itself either now or in the near past. There are relatively few rank outsiders, so to speak, who broaden the debate with more general considerations. When it happens it is delightful; it does not happen enough. That could also be due to the fact that debates are badly timed. They are timed at just those times when such people tend not to be there. Maybe there is a bit of both. I do



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

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[Chairman *Contd*]

wonder, though, whether there is not something that we could do to help ourselves and thereby to help the House. I was talking about this with our Clerk, Dr Walters, earlier today as to whether we could not start off every report with a more popularly written executive summary, and I meant popularly written, which said why we did it, what the essence of the evidence is in simple terms and what in simple terms we concluded from that. That would mean that what we did was more immediately obvious and therefore perhaps more immediately attractive to the House at large and, indeed, some readers of such a popular introduction might then wish to read the rest of it and thereby get involved, whereas before they would not have done and might have been put off by the detail into which it tends to go very quickly. It is also possible that we would be more influential if we deliberately found a way of helping the legislative process more consistently than we have so far. May I say I chuck out that suggestion not with the hope that you will merely reproduce it with some words of commendation. I think that it needs thinking about very carefully as to whether we can do that. On occasions we have. As you know, we influenced the Nature Conservancy Council Bill by pointing out that splitting up the Nature Conservancy Council into three countries of the United Kingdom was all very well and perhaps constitutionally correct, but did not make much sense if you split up the scientific background on which it all rested because there is, in fact, only one United Kingdom ecology, not three. We managed to get our views together quite quickly, in about three months, I think, and in time, which is more to the point, for consideration during the passage of the Bill. It undoubtedly influenced the outcome of the Bill. There have been one or two other cases like that. The split up of the GLC would have left various scientific capabilities floating, or even sinking, and we managed to do something to help preserve those. My Lord Chairman, you have referred already to the priorities in medical research. That report appeared a long time before the NHS Bill. It was not replied to by the Government and I am very glad that it was not, as it turned out, because it meant that the debate took place at the time when the Bill was passing through the House. As a result of that it had quite an influence on the Bill and, indeed, led to the creation of the director of research and development of the National Health Service combined with the office of adviser to the Secretary of State. That was a very valuable outcome and the sort of thing that I judge the influence of the committee by. Whether we can set out deliberately to do that very often I am very doubtful. My reason for that can be put quite simply. The chief value of our Select Committee, I think, is that when it publishes a report it is recognised widely, outside this country too, as authoritative. It may not always be interesting, but it is authoritative. It is only authoritative because the Committee goes into matters in great detail and with sufficient breadth to believe that it knows what it is talking about. Now that takes time. It takes typically six to nine months to reach the point when you really understand the issue well enough to say: we are now authoritative on

this subject, we are now going to make some recommendations and prepare our report. When a Bill suddenly arrives before the House or even before the Commons at an earlier stage, there just is not the time to be able to do that so you have to be able to foresee what there might be in legislation that you can help with. Occasionally we can; mostly I think we cannot. It is, however, something to which I think that we must give continual attention so that we can help when the occasion arises. I am sorry, my Lord Chairman, I have gone on rather a long time.

Chairman] Thank you very much, Lord Flowers. I should only like to say—I do not know what my colleagues feel—that my instinctive reaction is favourable to the idea of some of your weightier and longer reports being prefaced by a short, popular summary. I think that there is something to be said for that, quite a lot, in fact. That is my own instinct. Do you have any idea incidentally about what sort of circulation the reports get? Is it considerable in certain instances or not?

(*Lord Flowers*) I know that the Clerk was looking into the sales from HMSO, which is about all that one can do, I think.

(*Dr Walters*) Perhaps we could put in a paper to you, my Lord Chairman.

(*Lord Flowers*) I do know, my Lord Chairman, that some of the reports have been adopted more or less as text books for university courses. I know of one myself at Imperial College. (I did not do it, they did.) I think therefore that some of them are regarded as of value in that sense, and that means that there will be a continuing demand for them. I know that Lord Aldington's famous report of some years ago had sold, a couple of weeks ago when he told me, 3,651 copies. I should be surprised if the innovation in manufacturing industry report does not sell a fair number of copies. How many our average report sells I have not a clue, but people do talk about them. When I go on semi-social occasions somewhere other than London people say: oh, I saw your report the other day, how interesting.

74. I do not want to hog the question time, but may I ask just this. I was interested in what you had to say about helping the legislative process. I think again I am speaking from an instinctive reaction. I am glad to hear that this is something that will remain very much in your mind. I do not know whether you would agree with me that it needs to be handled with a good deal of caution and discretion otherwise, if one is reacting to Bills, there is a possibility that your Committee would lose something of its non-partisan characteristic.

(*Lord Flowers*) Yes, that is my worry too, but if I may give an example I think that we missed a point. There is at present going through the House the British Technology Group Bill to privatise BTG. If a year ago it had occurred to us to have a look at the nature of the work of BTG and to have an enquiry into intellectual property rights, for example, then the question of the future of BTG would have come up and we might have been able to include in a report on that work to the effect that whether BTG was privatised or not—and I agree that we probably have to keep off that issue because it is conceived as being

[Chairman *Contd*]

too party political—there were certain essential characteristics that it had to have and certain financial arrangements that it had to have so that it could deal with things that were longer term than the normal financial markets were able or willing to deal with. Had we done so that might quite significantly have modified the Bill that came before the Commons and recently came to us in a form which is forcing us to fight very hard to get some essential characteristics of BTG written into the Bill if we possibly can. Now I think that the select committee could have helped considerably with that. The question is, how would it have known a year ago that that was going to be an important issue now.

Chairman] We will be turning to some specific subjects like staffing and future work and the handling of your report by the Government on the floor of the House and so on, Lord Flowers. I am wondering whether members of the Committee have more general questions.

*Lord Pym*

75. May I put some questions about the scope of the Committee. Could Lord Flowers throw a little bit more light on how the subjects are chosen? You say that there is a wealth of suitable topics. What actually happens? Do the Members of the Committee put up suggestions and you have a discussion for an hour and conclude: *this* is what we will go for. How do you actually come to a conclusion?

(*Lord Flowers*) All of that and a few other things too. You will see forensic science appearing on that list. Over the last few months I like many other people in this room have got increasingly alarmed and fed up with the way that forensic evidence in trials years ago usually turned out to be—or appeared to be—absolute nonsense. I simply said to the Clerk: look, I really think that we might look into this, we have not taken the Home Office a part ever, it would be interesting to do that on this issue, the question being, how did they come to have a scientific department or whatever they call it (I have not taken evidence from them so I do not know) which could have employed people of the kind who could have made the mistakes these people seem to have made. How did it come about that such a thing could happen, do they do any better these days and how does one try to see that things like that do not happen again. That is how that got in the list. It could equally well have been an enquiry for the Commons to treat with not very different emphasis—although whether they would be expert enough to do it I do not know. That was just a suggestion that I got from reading the newspapers, and it went on the list. Yes, occasionally we have a meeting; Sub-Committee III, the somewhat mysterious general purposes sub-committee, has a discussion about what topics would be interesting to pursue, and suggestions are made there. I have tried to broaden things a little by asking all members of the Select Committee to think very seriously about the topics that they think would be suitable for us to look at, that is to say, with a suitable mixture of science and politics in the policy area. Some of the suggestions are sent in to the Clerk by

members and by outside bodies and he includes them for discussion. I should be extremely happy if members of the House more generally would say they thought it would be very interesting if we studied something or other and we should take such suggestions very seriously. My answer to Lord Pym has to be that the ideas come from all over the place. Our job is to try to see whether there are one or two topics in the course of a year to which we believe we can contribute significantly.

76. As very much a layman in matters scientific it surprised me to read in the evidence and to hear you say this afternoon that a committee on sustainable development is beyond your orders of reference.

(*Lord Flowers*) The economics of.

77. Yes, lots of economics in it and lots of politics in it, but surely fundamentally it is a scientific question—what are the resources—and is that not one of the governing factors? Who else but those in the profession of science and those disciplines would be able to put a meaningful answer to some of the enormous questions that that concept raises?

(*Lord Flowers*) May I suggest to Lord Pym, my Lord Chairman, that many people have thought of sustainable development as a proper responsibility of the Department of the Environment. Indeed, it is the lead department if you mention that phrase.

78. Sure.

(*Lord Flowers*) I had not thought of it like that at all. I had thought of it as a matter for the Treasury in the first instance. That is why the word economics went into it, to emphasise this. It is the stated policy of the British Government to adopt economic methods that allow sustainable development. I suspect that they mean by this—the former Prime Minister who announced it—that the way of sustainable development was for others to follow, not for us. However, if you go into it in a little detail you find as originally proposed it was primarily something the developed world had to follow to make it possible for the rest of the world to have development of their own in the future. The problem for me really was to say: all right, if we are going to follow the path of sustainable development in our economic policy what sort of fiscal measures can we invent that will encourage stable development rather than the opposite—all these things to do with Treasury-like matters. That is why, although I should have been fascinated to have done such a study in the Science and Technology Committee, I felt, no, this was not a job for us. There was a place in it for one or two scientists or technologists; an engineer or scientist could contribute certainly, but we wanted a fair mix of economists and former civil servants, people like that, as well.

79. You are familiar with the whole broad field of science and technology. Do you feel that the select committee of this House of which you are Chairman is in scale about right to deal with those issues—we have heard how you pick out various subjects one year to the next—you feel on the whole that you are not, as it were, over-structured, possibly if anything under-structured, in relation to the scope of science



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued]

[Lord Pym *Contd*]

and technology; or do you think that your committee as at present structured is about right?

(*Lord Flowers*) I have thought about this too, Lord Pym. In order to have a broadly based select committee itself—I am not talking about sub-committees—which can be entrusted with considering science and technology, our terms of reference, just that, we need to balance quite a number of different aspects of the problem. We need to balance science and technology. We need to balance the pure and the applied—not quite the same thing. We need to balance the biological and the physical in both the pure and the applied. We need to balance the academic led and the industrial led, and sometimes we find that we have to balance civil and defence. Therefore, there are a lot of balances that one has to try to keep. If we were to do the sort of enquiry that we do but the select committee itself did just one a year it would be very difficult to look at any definite issue that would keep a select committee carefully balanced across all those things—interested in and happy with and taking a full part. I have been Chairman long so I think I can say this: we have succeeded in keeping the committee hard at work, interested and contributing, I believe, to the work of the House, by splitting up into two—and not permanent parts, they are called Sub-Committees I and II but the populations of them change from enquiry to enquiry. We keep everybody involved and co-opt other members of the House as well, of course, in accordance with the particular needs of the topic. Taking one year with another I think that we cover pretty well all those balances that I have mentioned in a reasonable fashion. If you ask me whether we can do that with one committee instead of two, I say no; if you ask me whether we need three or more, if I was pressed for some reason to create a third one and if it was also adequately staffed I guess that we could do it, but quite honestly I think that we are then reaching a point when the resources of the House—I do not mean the resources of the office—the number of peers who could play a really active and busy hard-working role would then be insufficient. I think that two or three is the right answer, and the committee itself is quite content with two.

*Chairman*

80. If I may follow on from what Lord Pym has said, you referred to the number of sub-committees, Lord Flowers. You also referred earlier—to use your phrase, I think—to the rather mysterious general purposes committee. I rather wondered myself why that general purposes committee is necessary when you have a select committee, a committee on which I think the members of the various sub-committees are represented. Given the need to husband the resources of the House perhaps for other *ad hoc* select committees, is it really necessary to have that general purposes committee?

(*Lord Flowers*) I think that it has met once or twice a year at most, my Lord Chairman. I think that it somewhat depends on the style of the chairman. If the chairman likes to bring together a small number of old cronies to discuss what the programme of the

committee should be or what on earth they are going to do with the sub-committee that is going off the rails then it can be a useful instrument. On the other hand, if he has presided over the Senate of the University of London for five years and he is accustomed to dealing with the body as a whole, so to speak, he does not feel the need for it. I do not feel the need for it.

*Lord Dormand of Easington*

81. My Lord Chairman, I was interested to hear Lord Flowers talk about a popular version of the reports. The Committee will recall, my Lord Chairman, that last week when we had Lady Serota here she talked in similar terms, describing it as a “slimline” report—I think that was the word. In view of this mention by both the Chairmen it seems to me that this is something that must be given the most serious consideration. Lord Flowers mentioned one reason for having such a report. There are a number of others. First of all is the cost, which Lady Serota brought up last week, you will recall. We can assume that the slimline report, the popular version, would cost quite a bit less, and that in itself would be of some attraction. It also strikes me that the ease with which such reports could be publicised would be extremely helpful. I do not think that I need to go into the other reasons, my Lord Chairman, but I do hope that the Committee itself at some deliberation will take into account the fact that we have chairmen talking about a popular version, a slimline version, and so on. Secondly, on the question of influence of Government—and I hope that this is relevant, my Lord Chairman—I do not know how many members of the Committee and, indeed, Lord Flowers, were present at question time when a question was asked about research and development, and we had at least five or six members who could not resist coming in because of the excellent reports that have been distributed by the select committee. I think that Lord Flowers has done at least two fairly recent reports, and the Minister never even mentioned them. I should have thought that one of the things the Minister could have done, quite apart from the value of the report and the content of it, was in regard to the political angle; here he was taking the opportunity to say how important the reports on R and D were, but they were not mentioned until the later stages. I thought that that was a pointer towards what the Government, or at least one part of the Government, might be thinking about our reports. Lastly, my Lord Chairman, I wonder if Lord Flowers would say whether he believes that the primary objective of such reports is to influence Government. He talked about the sale of these to universities, and that has cropped up before. In respect of the library stocks of the universities for teaching purposes and for research purposes—everything that is connected with learning—I wonder whether that would indirectly influence Government? I am not sure, but I would welcome hearing Lord Flowers on this.

(*Lord Flowers*) There are two questions, my Lord Chairman. First, on the popular version, I think that Lord Dormand may have misunderstood me slightly.

1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued]

[Lord Dormand of Easington *Contd*]

I was not suggesting that there should be a popular version of the report. For reasons that I will give in a moment, my Lord Chairman, I should not wish to do that. What I was suggesting was that the report should begin with an executive summary that was deliberately written in a popular way. The reason, and this is perhaps unlike the European Committee—I should not say very much about that because it is a long time since I served on one of its sub-committees—is that it is essential that the Science and Technology Committee be authoritative in what it says and be seen to be authoritative. Therefore, although the executive summary can state in simple terms what we did and why and what we found out and what we recommended without any arguments of any kind, the report itself, which must be part of that, has to be able to stand up against the examination of people who are in a position to know: if we say something about the quality of design in railway engines, it must stand up to the questioning of the Institute of Mechanical Engineers. If it does not, our recommendations can be taken to be false. We have to say enough in the report itself for the Institutions of Mechanical Engineers to know we understand what we are talking about and that we had got it right. I would be against a report that was purely a popular report because nobody would know whether we were right or wrong. I do think, however, that we should bend towards what I imagine would be the wishes of the House if we asked them and give a popular introduction to a report in the first chapter.

82. I do not think I misunderstood that. I would not want what you were calling the popular introduction to be in any way different from the real meat. It just seemed to me that the kind of introduction could have simplified it in some way without contradicting the integrity of the report. It is something that could be done—perhaps that is what you were trying to do?

(*Lord Flowers*) Absolutely. I should even go so far as to say that the first chapter of a report could almost be in the style of a serious article written for the *Financial Times*. I do not think that we disagree. You ask a second question about influence and the Minister not mentioning our reports at question time. Maybe if one or two of the members of the select committee had been present—I do not know whether they were or not?

83. Yes, they were.

(*Lord Flowers*) I am afraid that I was not. If so, they could have stood up and said, “Is the Minister aware ...”.

84. Which is what I said.

(*Lord Flowers*) We will come on to qualities of Ministers no doubt later.

*Lord Tordoff*

85. On the question of popular editions, it is a pity we did not think of this when Lord Ritchie-Calder was still alive as he would have been an ideal person to write such an introduction. May we talk about resources from the House and the attitude of the House to science and technology because it seems to

me that a number of the things that Lord Flowers has referred to rest on the view of other members of the House of the select committee. They see it, I think, as a collection of people who are on the whole talking over their heads. This is a lot to do with our education system in this country which treats you as being civilised if you can quote large chunks of Shakespeare and other major works, which indeed most scientists can, but as not necessary in order to be civilised to understand science and technology. Anybody listening to questions on Mastermind will know what I mean. The committee suffers because of that, it seems to me. First, recruiting to this committee is not all that easy. If you look at the numbers of people who have been members of it they have been only 37 in the whole of its existence, and at any time you find there are roughly 15 people on it. Therefore, there is not a very high turnover of people, which may be because of the five-year rule or it may simply be that the pool of people who feel themselves capable of serving on the committee is not high enough. I speak as one who, looking down the list, is quite clearly the least distinguished scientific member of the committee ever. Nevertheless, I was able to make a contribution while I was there. Are there any ways of encouraging Member of the House to become members of the committee and to bring their knowledge if not their expertise to bear? It also seems to me that this bears on the whole question of debate. If there were a greater desire of Members of the House who are not members of the select committee to take part in the debates then it is probable that the usual channels would find it easier to find more prime time although I think the criticism that you make of the usual channels for not putting on debates at proper times is a very reasonable one. If I may touch on one possible suggestion for that, I wonder whether there might be some way of timing the reports themselves so that debates came on in the early part of the parliamentary year when the timetable is less congested than it is towards the end of the year. There appears to be a number of interlocking problems here that relate to pool of resources in the House and perhaps the need for the Science and Technology Committee itself to do a little bit of fundamental teaching to other Members of the House that science and technology is not really so obscure to the sort of intelligent people that we have around this place.

(*Lord Flowers*) My Lord Chairman, may I say to Lord Tordoff that if I were to listen to a debate on a report of an economics committee in the House I should probably find it over my head. Whenever one gets a report from people who have made themselves expert in the subject—I do not mean that they are necessarily expert before they start but they make themselves expert by working for a year—their talk is almost bound to be above your head because very few of us have the ability to talk on level terms without talking down about something which after all it takes a long time to study. It is a gift that very few of us have. I do not know how you go about that except to do things like a popular introduction and maybe trying as chairman of the select committee or as a member of the sub-committee to introduce the thing in terms that are intelligible to the House, and I



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued]

[Lord Tordoff *Contd*]

think mostly we do that. I know that Lord Sherfield always tried to do that, and I know that Lord Carver tries to do it; indeed, I try to do it. As far as the membership of the committee is concerned it is necessary for me to say, I think, that one of our problems is that almost without exception (though there are a few) Members like being on it. They greatly enjoy it. When they come off they say: oh, did I really have to come off, can you not get me back on again, can you not co-opt me. The result of that is that the five-year rule in effect has not worked terribly well. I do not know whether the select committee has noticed, but through my past career I have become accustomed to that sort of thing. I suggest to you that a rule you might care to propose, my Lord Chairman, is that when a five-year rule operates it should operate inflexibly for at least one year, that is to say, when you have finished your five years you come off for at least one year and you cannot be co-opted on again or anything for that time. Then you will bring somebody on perforce and maybe he will turn out to be better than someone you have, and this starts the process of renewal. We have had some turnover. It has not been as much as it should have been. I am going to try to make it a bit more. However, I shall have some difficulty in persuading one or two extremely influential Members of the House that their time has come. Lord Sherfield was very good. He set a very good example, which others did not see the need to follow.

Chairman] When we write our report we will bear in mind what you have said about the rotation of crops.

*Lord Tordoff*

86. May I just ask specifically whether five years is too long?

(*Lord Flowers*) I do not think so. It takes a little time for people who are not expert in the science plus politics area, and most of us in the House were not when we started off. It takes a little time to learn it and to get to understand the nature of the government machinery and all the interdigitating forces and so forth. I should have thought that five years was not too long, but it is too long if it is immediately followed by a few years of co-optation.

*Lord Boston of Faversham*

87. My Lord Chairman, if I may go back to what Lord Flowers said about helping the legislative process it is clear that the committee has helped that process and we have had one or two examples this afternoon of the ways in which that has been done. I was wondering whether Lord Flowers had in mind undertaking this if it is possible to do so in a systematic or comprehensive way, that is to say, with some sort of standing arrangement. One appreciates that some Bills will not have any scientific or technological implications at all, but does he have some sort of systematic arrangement in mind rather like a financial assessment of the financial implications of a Bill or an environmental assessment or staffing considerations, to mention a more specific matter? When he concluded his opening remarks just

now on this particular aspect of the matter Lord Flowers mentioned the difficulty of predicting what is going to come up and the impossibility sometimes of seeing 12 months ago that there was going to be a particular Bill on the stocks 12 months later. I am wondering whether, if he has it in mind to have some sort of systematic standing arrangements, he would also envisage that that would encompass some sort of early warning device. One appreciates that governments have the habit sometimes on some of their legislative proposals of keeping them rather close to themselves, but that does not always happen; there is often a consultation period, a White Paper, an advance warning of Bill coming up some time ahead. I was wondering what sort of system Lord Flowers had in mind to seek to accomplish what seems to be, if I may say so, a desirable aim?

(*Lord Flowers*) My Lord Chairman, may I say to Lord Boston that we are agreed that the aim is desirable. I prefer to do it from the seat of my pants than to have a system. If you have a system in this House it will come under the control of the Government Whip's Office. There is no way of avoiding that. How do I know when they say, in six months' time it will be very handy if you had a view about BTG when what they really mean is: we are going to introduce a Bill in six months' time we do not want you to express a view about so please get busy with *this* one. That is why I do not think a system would be a satisfactory way of dealing with it. I shall have to keep my ear more to the ground than perhaps I have done.

*Lord Thurlow*

88. My Lord Chairman, if I may come back to Lord Flowers' very interesting suggestion about a more popular introduction to the reports, may I ask whether he would consider that this might be varied to this extent which seems to link it up with the problem of getting more reality into the debates and more participation: might it be possible to publish this introduction as a separate sheet or, if it were a few pages, a separate paper in the Printed Paper Office which could then be circulated separately from the report, whether slimline or with evidence, thereby bringing the report to a wider range of notice. In the context of participation in debate I would hope that this might perhaps stimulate people to see that there are general aspects as well as specialised aspects and perhaps induce them to take an interest in debates. Would that be a possible beneficial product of such an arrangement in the impact and outreach of the report to get wider notice by being able to circulate such things to the press and so on?

(*Lord Flowers*) May I thank Lord Thurlow for the suggestion, my Lord Chairman. My answer really is no, but let me try to explain myself a little bit. We already of course split the report into two, namely, the report and the evidence. The evidence is usually very thick, say 5cm, and the report much thinner, say 1cm. We also issue a press release, very often if not always.

(*Dr Walters*) Always.

1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued

[Lord Thurlow Contd]

(*Lord Flowers*) It is possible that the press release could serve the purpose, but of course press releases are written in the form that the press would like to quote from. Let me tell you now why my initial response to you is negative. It is simply that if we were to publish a separate child's guide, so to speak, that is what would be quoted, that is what would be read and that is what would be criticised as being inadequate.

*Lord Tordoff*

89. Yes, quite.

(*Lord Flowers*) Not the report itself. That is why I find it difficult to compromise further than by saying: well, there is a press release and there is a report which in future will have a more popular introductory chapter to it.

*Lord Bancroft*

90. My Lord Chairman, I have three fairly brief questions. The paper that Lord Flowers submitted, which I found very compelling, and his oral evidence today both tend to stress the imbalance between the peer resources and the clerk resources which are devoted to the work of the select committee on the one hand and the difficulty of establishing what influence on Government the reports have together with the extraordinarily small amount of time that is devoted to debating the report, which again emerges from the evidence. On the last point Lord Flowers suggested that the usual channels were not always the most effective forum for achieving this. You said, Lord Flowers, that you hoped we might come forward with some suggestion to remedy this imbalance. Do you have any particular thoughts of what suggestion might be made?

(*Lord Flowers*) One suggestion you might like is that, to go to the extreme, three specific afternoons should be set aside during the session for debates of select committee reports, 17 July or whatever and so on. You might consider, less dogmatically, that you could advise something like that. I think that it would be very useful so that they could be in "social" hours.

91. Yes, I think that that is very important. Lady Serota when giving her evidence said that from time to time one found the reports of her select committee were timed at the dinner hour and unstarred question time and treated in a very cavalier way, reports which had resulted from an immense input of time.

(*Lord Flowers*) I do not want to appear unduly critical of the usual channels, they have a difficult job to do and they do it reasonably well, I think, to the satisfaction of most of us in the House, but they have their sense of priorities, quite naturally. Unless somebody suggests that those priorities should be changed or added to I do not see how they could be expected to do otherwise. At the moment they give us some time when they can out of the goodness of their hearts. They have a vague sort of duty to do so, but I think that they need a rather sharper duty in which I hope this committee can help, my Lord Chairman.

92. In the written evidence that Lord Flowers submitted there is an interesting contrast with the European Select Committee's notion of having a deadline, as a rule of thumb say a written reply from the Government within a month and then a debate so the debate can take place both on the report and on the Government's response to it rather than awaiting the Minister replying to the debate and reading out his brief at the very end; whereas your evidence, if I understand it correctly, suggests that the written reply from the Government should come after the debate and should as now happens come in the form of a White Paper or whatever. This is what I understand you to continue to advocate as the best way of dealing with the sort of subjects on which you report?

(*Lord Flowers*) The answer will depend on when you ask it and of whom you ask it. You are asking it of me now, so I will give you my answer. We have discussed this in meetings of the Select Committee. Since our main objective is to influence Government to do something differently from the way that they would have done it, the view is that it is better to present our report and have it debated and see whether there is wide support for it; and I am disappointed to the extent that we do not succeed in getting that, but that is the intention. If there is wide support for it and the Government has not yet announced its intention there is some hope that the Government might change its mind before doing so. Once the Government has announced its intentions it is usually almost impossible to get it to change, especially if it is not a matter of legislation but of practice. Many of our reports are to do with civil service practice or whatever, and it is very difficult to deal with that once an announcement has been made. We feel therefore that it is better to debate it before the Government replies. That at least forces the Government to start thinking about the matter, which is perhaps a step forward sometimes, and whether the Government's reply to us in the debate is satisfactory or not it has at any rate started the process. We thought that the balance of advantage lay that way. However, as I said at the beginning, if you ask somebody else at a different time you may get a different answer.

93. My third question flows, I think, from the other two. It concerns the statement in the paper that the discernible "successes" of the select committee have sometimes tended to be in the influence that the reports have had on the machinery of government and the organisation of science. From my own 30-odd years in public service I do not think that the machinery of government as regards science was ever got entirely right if only because science keeps evolving and machinery of government is always running to catch up. I was interested to look at the annex where you list possible subjects for further examination that the select committee has in mind. I was not clear how many of those fell into the areas of past successes, as it were, the organisation of science, the machinery of government and so on?

(*Lord Flowers*) The list of future enquiries or past ones?



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued

[Lord Bancroft Contd]

## 94. Future enquiries.

(*Lord Flowers*) How do I know till we have done it? I think that we are looking at it a little bit too narrowly. It is probably my fault. Most of our more obvious significant recommendations whether accepted or not are addressed to Government, that is quite right, but Government is not the only recipient of our recommendations. If we were going to do a study of high school science, which is on the list, that is to say, what is the adequacy of the various syllabuses for the teaching of science in schools, what is the quality of teaching they get, the teaching methods they use and things of that sort, as to why we should be interested in that, it is because this is the provision of scientific manpower of the future and that is the point of view we would be looking at it from. There would be recommendations to Government about that certainly, but there would be many recommendations to those who devise science syllabuses and to teachers and teaching organisations maybe. Therefore, I think that the recommendations would be not only to Government, nor are they usually only to Government. So far as the machinery of government is concerned in the list if we were to get involved in something like environmental law depending on science and technology it would be very likely that we would be suggesting some changes in Government to cater for our views. If we are to do forensic science I would be very surprised if we did not have some suggestions for them. In most of these things that we have looked at, which very often cross departmental boundaries anyway, there are stumbling blocks, inefficiencies, borderline disputes, whatever it may be, that are part of the cause of the trouble. We almost always find that. The suggestion for streamlining things a bit is a machinery of government point, however small it may be.

Chairman

95. If I may just follow what Lord Bancroft has been pursuing on the question of the machinery of government, I did not see anything in that list that bears on the follow up to the Morris report, how the reconstituted ABRC is working, how the dual support system is now looking, that sort of area. Is this something that you have contemplated following up on or not?

(*Lord Flowers*) We put follow up on one here, agriculture and food research. There are several follow up investigations that we might very well do. I certainly have in mind a follow up to the science funding report, which was an emergency look at the problem, because I am by no means satisfied with the way that that area, often called strategic, between basic science and applied science is dealt with. It seems to me that it is being squeezed at both ends. At the industrial end industry does not put much money into basic research and the Government does not like to put much money into near market research. There is a trough in the middle that is filled partly by various programmes, but only partly. This is something that I want to follow up as a follow up to that report. We shall wish certainly to follow up our report on

Priorities in Medical Research. Indeed, we have done so to the extent that we have had a private meeting with Professor Peckham, who is the director of research and development and who came to see us at his own request early on in his appointment. That is something that has not happened before but which of course we welcome. We had a free and frank exchange of views; I think we helped him a bit, and he helped us. What we did agree was to keep in touch. I am very glad that this sort of relationship with senior individuals in government should come about because it helps us keep the finger on the pulse and keep in touch with what is going on even though we are not in the active mode, so to speak. There will be quite a few follow ups of various things of that kind.

96. Following up what Lord Bancroft asked you about, perhaps you can let us know how it came about that three not unimportant reports of your select committee were discussed at about the worst time they could have been discussed, all bunched together on a Thursday, last day of term, starting in the morning. How did that come about?

(*Lord Flowers*) The short answer is, I suppose, because I agreed to it, in certain circumstances. Let me first of all say though that the attendance on that occasion was, I suspect, not all that different from what it would have been on ostensibly more auspicious days.

97. I was raising this matter not to point a finger at you, Lord Flowers, but because in looking at the replies in the questionnaire that we have sent out this particular thing has been commented on unfavourably by a lot of people.

(*Lord Flowers*) The problem was this, my Lord Chairman. The science funding report we claimed was in response to a crisis. It therefore had to be debated at once if it was to be debated at all. We obviously had to choose the earliest date we could reasonably find. There were two other reports that had not been debated, one on international scientific programmes and one on definitions of research and development, which is quite important for knowing what it is that we are all talking about. They had been hanging about for a long time. We had other reports coming up that we certainly want to have debated at an appropriate time so we wanted to get rid of these other two—interesting in their own right, but we could hardly expect three afternoons to be set aside for us before the end of July, which was the situation we were in. We therefore talked about it informally, not at a formal meeting of the select committee but at sub-committees and so on, and we agreed that the best thing in the circumstances was to have three on one day “if you can find a day, please”. I took the first available one, so it was claimed, which was the last day of term. It was unsatisfactory, but it was the best thing that we could do in the circumstances, and I agreed to it.

Lord Thurlow

98. My Lord Chairman, may I ask Lord Flowers whether he thinks that it would help at all in the impact of reports if the report, not the evidence, but



*1 July 1991]*

LORD FLOWERS AND DR R H WALTERS

*[Continued]**[Lord Thurlow Contd]*

the report itself, were put in computer language and into databanks to be accessible to that wide community that I am told has access to databanks?

*(Lord Flowers)* You mean to publish it in the form of a disk or some such thing?

99. Yes.

*(Lord Flowers)* My Clerk tell me that that is a matter for HMSO really to release the disks. It is already on disks.

*Chairman*

100. In your introductory remarks you mentioned the new Commons Sub-Committee that will be dealing with technology and science, Lord Flowers. From what I understood you to say you did not anticipate any great difficulty in arranging that there would be no duplication or overlapping between that Sub-Committee's work and the work of your own Select Committee. Am I right in thinking that that is your view? Secondly, in that context, as you know, we have Sir Peter Emery and Terence Higgins coming to see us next week, can you tell us what your view was on the alternative recommendation of Sir Peter Emery's Committee that consideration should be given to the establishment of a joint select committee on science and technology? That is one area of liaison on which I should like to ask your view. Do I gather from your remarks that liaison with the European Communities Committee on matters that touch on your area and vice versa is fully satisfactory? By the same token in regard to your coverage of science and technology in the European Community context are you thinking of further enquiries in that area or not?

*(Lord Flowers)* I am slightly more cautious than you are suggesting about what will happen when the Commons Sub-Committee on science and technology gets going. I think I said I did not know what was going to happen, but experience in the past so far has been that when there has been an apparent conflict between Energy, for example, and what we are doing, we have managed to complement one another rather than compete. I see no reason why that should not continue in future although of course with a committee in the Commons now empowered to look at science and technology across the whole field of government and not just in one department there is, I suppose, a greater danger of conflict. The next point I want to make has to do with that and also whether there should be a joint committee. The Commons are very well set up to look at the political aspects of things. They are not well set up to look at scientific and technological issues underlying that. It is the other way round with us with due respect to the more political Members of our House. In the Select Committee it is the other way round with us. We have talked about this on the Select Committee many times, that is, the possibility of a joint committee, and have always come to the conclusion that we would end up with a camel, something that did not serve either purpose. We are definitely against a joint committee to replace what we already have. If you said there might be occasions where a Commons committee and a Lords committee might meet to

discuss some particular issue that had arisen I do not think any of us would find objection to that in principle—I certainly should not. There may be such occasions in the future for all I know—I do not know what the future holds in that regard—but a joint standing committee, no. I do not think that either of us could do the job that we are set up to do.

Lord Pym] I think it is a very reasonable and logical view to take, and I should support it myself. The difficulties of having a joint committee are far too great to be worth it. It is much better that they are separate. What is so excellent is that they both understand the difficulties of a joint committee and complement each other, and that seems to me to be exactly how it ought to be.

*Lord Dormand of Easington*

101. I take that view too, my Lord Chairman, particularly in respect of Lord Flowers' last remarks that there might be the odd occasion. To my mind it would be very odd, and I speak as a former Member of the House of Commons. It would not serve too much of a useful purpose.

*(Lord Flowers)* My Lord Chairman, the Clerk reminds me that in preparing our greenhouse reports, one in the Commons and one in the Lords, members of the Energy Committee and the Science and Technology Committee visited Washington together. Subsequently, members of the two Houses went on a joint mission to Senator Gore's international conference in Washington and it was quite interesting to see the interplay of interests and the degree of involvement in the conference that resulted from the two Houses. Let me say a word about the European Committees and its relationships with us, if I may. I certainly have no complaint. Where issues have arisen where they have to go into the science or engineering of something fairly deeply, they have on occasion asked us whether we would propose one or two of our members to serve on their sub-committee for that purpose. We have been glad to do so. We would always in principle be ready to do that. The only difficulty arises—a difficulty in principle rather than in practice, I think—where as sometimes happens the European Committee uses something coming out of Brussels as an excuse for doing a study of a scientific or technological issue which really has very little to do with Europe but is very largely a domestic concern. Home energy policy is an instance which can readily be tacked on to a few words of European policy to justify it. It is something that equally well we could have done and perhaps should have done. I do not think there are many occasions when it has happened. I remember years ago when I served on the energy sub-committee of the European committee I felt we were doing something there that the Science and Technology Committee probably should have been doing. There are maybe a few cases since then where that would also be the case. I think we need to watch that sort of thing and we ought to be prepared to help each other when we can be of assistance because science and technology issues do occur in



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued]

[Lord Dormand of Easington *Contd*]

most areas of policy to varying degrees and at various times, and we should be prepared to help if we can. On the whole I have no comments to make.

*Lord Pym*

102. Would it not probably be the case that this issue that has come out of Brussels or the Community has arisen at a time of year when your sub-committees are committed to other subjects and you would not have the scope to look into it, so is any harm done?

(*Lord Flowers*) No, certainly no harm.

*Lord Tordoff*

103. On the question of staffing, I was intrigued by the suggestion in paragraph 12 that there should be an additional member of staff by way of a committee assistant in order to refine and synthesise the considerable quantities of evidence. I wondered whether that was not the job done by the specialist assistant normally?

(*Lord Flowers*) No.

104. The difficulty of having a part-time committee assistant, which I think is what you propose, might be that his discipline might not meet the needs on that subject, or was your intention to appoint a committee assistant for each separate investigation?

(*Lord Flowers*) Perhaps I may say a word about the staffing of the Committee in slightly more general terms than put to me. We have two clerks. They both do a fine job. I have nothing to say about that. We have on a temporary arrangement a special assistant who is enormously helpful, especially on statistical analysis of the things we need. If we need facts we immediately go to him and say, please find us the facts. He draws them up and presents them in a highly readable and understandable form and with commendable speed and clarity. He is invaluable and has most certainly proved the long-term worth of that post, although he cannot himself expect to occupy it for ever more. That is a permanent requirement, I am quite sure. Incidentally, it is very valuable when preparing the report, and the clerks are busy writing the reports; his assistance to them at that stage is also vitally important. What we had in mind was something else for the committee assistant. At times when we are taking a great deal of evidence—for each sub-committee there are peak times when this is happening—much of it technical, it would be very helpful if for that relatively short period, a couple of months, or three or four months, we could appoint someone, perhaps even someone working at a university for a master's degree or doctoral degree, to help us sift the evidence and understand it, just for that limited period. There are lots of people who can be called on to do that. It is very commonplace in the United States. Congress is full of people just like that who are usually doctoral students who come in for a short period and help out in the various committees or help individual senators—senators are well staffed there. We thought

we could make use of the same device in a modest sort of way just at the peak times of our evidence taking. It would be very helpful if we had that flexibility. I would be surprised if some of the European committees did not find such a device useful to them.

105. I was just pointing to the interrelationship between that sort of post and your specialist adviser.

(*Lord Flowers*) Are we getting our terms right. The specialist advisers are usually professors or distinguished people like that.

*Chairman*

106. FRSS?

(*Lord Flowers*) Perhaps!

*Lord Tordoff*

107. I am aware from having served on the committee of the role that specialist advisers carry out. I also found them very helpful in as it were weighting the evidence that was pouring in. What you are suggesting is that there should be some admittedly highly skilled person to come in and filter the evidence before it got to you and to the specialist adviser presumably. Is that wise?

(*Lord Flowers*) There is a great deal of sheer ordering of the evidence to be done. I will ask the Clerk to speak for a moment because he has to handle this and he knows what he is talking about far more than I do. There is a great deal of sifting of evidence to be done and presentation of it. The specialist advisers are people who are usually professors or people of some distinction and they are very busy people, they are very expensive people, and they are of enormous help to us. They help us to formulate questions we want to ask, they help us to call on a useful set of witnesses, they help us to formulate our views, they sometimes write out a possible skeleton draft of some of our recommendations, saying: you should recommend this and such-and-such things will happen. We discuss that and as a result clarify our opinions greatly. They are very valuable. However, they do not do the relatively low grade business of sifting all the paper. May I ask Dr Walters to come in at this point and explain himself what he has in mind?

(*Dr Walters*) This kind of person could be used by the committee not as a filter, as Lord Tordoff implies, but more to highlight important features in the evidence so that when the committee has circulated to it perhaps a dozen documents each of which could be anything between three and twelve pages in length members would have received with each piece of evidence a gloss on the front of it to highlight some of the important features to be found in the evidence and perhaps to skim some of the superfluous material for which the committee had not asked. That would be of enormous help for members of the committee. It is something that at the moment the clerk could do but cannot because of pressure of time and which the specialist advisers are really too grand to do and do not have the time to do either.

1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued]

*Lord Dormand of Easington*

108. I wished to raise the question of specialist advisers also as in paragraph 21. Why do the sub-committees not employ or engage the specialist adviser for the whole or perhaps most of the enquiry?

(*Lord Flowers*) They do.

109. The paragraph does not say that. It says, "to assist at the first deliberative meeting of the sub-committee".

(*Lord Flowers*) In that case the paragraph is slightly ambiguous. The point was that it used to be the case that the sub-committee met, started discussing its subject and then after a while said: we need special advice on *this*, who can we appoint as specialist adviser to help us through the mess we have got ourselves into. We have now changed that practice. When we meet the first time to discuss something we make sure we have at least one specialist adviser there to help us right from the beginning.

110. You would agree however that is what the paragraph suggests?

(*Lord Flowers*) I think perhaps it can be read in different ways.

111. In my early days at the House of Commons I was a member of the Select Committee on Nationalised Industries. My memory of that time is coloured by the fact that over the period—I was on it for the whole of its existence—we had two specialist advisers who were absolutely superb and they guided us the whole of the time and helped with the report. That is why I was concerned.

(*Lord Flowers*) It is essential to have them with you right at the beginning to help draft the plan of the enquiry.

112. How difficult is it to obtain suitable specialists?

(*Lord Flowers*) Not as easy as one would like because the people of the quality that we want and need are invariably very busy already. I do not know whether the pay they get is attractive—I should not think so. I know that some of them feel a sense of honour and indeed a sense of interest because they are usually seeing a problem from quite a different point of view from what they are used to.

Chairman] Lord Flowers, you have been very patient, nay, long-suffering. I should like to move towards a conclusion with questions about one or two more general subjects. In your introductory remarks you mentioned the possibility of establishing *ad hoc* select committees on this and that. Indeed, there is the suggestion that the economics of sustainable development should be examined by an *ad hoc* select committee. I have been impressed by the replies to our questionnaire, in which almost unanimously there is an affirmative response to the question: do you favour the establishment of appropriate *ad hoc* select committees given the expertise of the House in various matters—for example, higher education, the medical field, economics of sustainable development, perhaps the judiciary and, indeed, perhaps aspects of

foreign affairs which are not just European or aspects of defence. Am I right in thinking that you also favour the establishment from time to time, without overdoing it, of suitable *ad hoc* select committees of this House? If so, how do you feel we can achieve that, given that the resources are stretched for the work of the House in general by private bill committees and so on, not to speak of your own Select Committee and the European Communities Committee. Do you see any means other than an increase of staff?

*Lord Tordoff*

112(a). Before Lord Flowers answers, I am slightly confused about his evidence when he talks about *ad hoc* select committees. Is he talking about such committees on science and technology subjects only?

(*Lord Flowers*) No.

113. Or about *ad hoc* select committees of the sort you refer to, my Lord Chairman?

(*Lord Flowers*) May I preface my answer with one point. The House is quite extraordinary as a legislative chamber in the world rivalled recently perhaps by the Supreme Soviet because it has a large number of academicians on it now although they are elected by the academy and not for individual merits, which is slightly different. Apart from that, it is unique. One ought to try to use that uniqueness in the best way one can. There are experts on almost everything. There are times when it is a good thing to bring people together to discuss a relatively narrow subject, thrash it out and make recommendations and so on as we try to do in our Select Committee. But sometimes it can be done in an *ad hoc* committee because it is a once off job—do it and be done with it. There are other times when the value of the House is that we are all mixed up and not separated into a lot of committees specialising in various things. I for one would be very much against the idea that we should put public bills to select committees. Whenever I have taken part in a stage of a bill the most surprising interventions that have taken place have been very significant, coming from people one would not have thought had an interest but did have an interest for some reason or other you could not foresee. It was important and that seems to me to give a flavour to the House that you would not find in a House that customarily sent everything to committees. Therefore, there is a certain sort of business I would not want to transact to select committees, but I do think that from time to time it would be a good thing to have a committee on the legal system or a committee on the practice of medicine or whatever you like to go into something quite thoroughly and write it up and be done with it—debate it, of course. I do not think there should be many such committees at once, but I really do not think that it would be straining the resources of the House too much to have one going at any one time. It is almost custom to have one going at any one time. I do not think there is one at the moment, is there?

(*Dr Walters*) No.



1 July 1991]

LORD FLOWERS AND DR R H WALTERS

[Continued

(*Lord Flowers*) But it has been so for a while. I do not see why perhaps you should not have two going at any one time possibly with staggered starts. That is something I personally would have thought reasonable. If you ask me, how do we staff such things (and I ran headlong into this with my proposal that there should be an *ad hoc* committee on the economics of sustainable development) I do not think I would wish to see the work of the Science and Technology Committee held back to staff an *ad hoc* committee of this sort. We already work our staff very hard. I would not for the reasons I have given before wish to see us reduced to only one topic going on at once. That would be very unsatisfactory. Therefore, you have to find the staffing of the *ad hoc* committees either from the European Committee or from additional staff. I do not mind which it is.

#### Chairman

114. The Clerk of the Parliaments, endorsed by Lady Serota, felt that at the moment there was something of a lacuna in our machinery that, except for the usual channels, there was—and I do not wish to cast any aspersions on the usual channels—a difficulty and there seemed to be the need according to both of them for some form of committee to meet from time to time and look at the various proposals, if there were any, for establishing *ad hoc* select committees and so on, generally to keep an eye on the select committee work of the House. I do not know whether you feel there is any need for any such committee and, if so, what form it should take?

(*Lord Flowers*) My Lord Chairman, far from seeing a need for it I would take out my shotgun if it was proposed to create one. There is your committee, and a very good thing too. I am all for an occasional committee on some aspect or other of the work of the House which looks at it and says: it is mostly all right but a few things are wrong and we think it better you should do so-and-so—and we do as we are told if we have any sense. Maybe in a few years' time there would be a son of Jellicoe when we have found it has not all worked out quite as we intended, or there are new demands. If you are talking about a standing committee to oversee the committee work of the House, no is my answer to you because it would inevitably be an additional layer in the hierarchy and it would inevitably feel that it had some control over the situation. There would not be any point in it unless it did. It would possibly wish to see the reports before they were presented to the House and in some sense approve them. It would perhaps wish to be consulted about whether there should or should not be an *ad hoc* committee on something or other; and would it then reflect the wishes of the House or of the usual channels or in particular the Government Whip's Office? I think the spirit of the House is at its best when we use those mysterious processes of sniffing around, finding out who supports you and then having a word in the right quarter, and that starts it off with the usual channels knowing that there is support for this and they cannot just bury it quietly because it is inconvenient. I should very much rather than have a standing committee of

some kind, which I believe would interfere rather than help.

115. Thank you for a straight answer. What I was suggesting was not any son or grandson of Jellicoe. The proposal put to us by the Clerk of the Parliaments was that the usual channels were not very open and clear at the moment as far as the establishment of *ad hoc* select committees was concerned. It might be, for instance, that the government side of the usual channels might not be too happy about it so that if one had this other machinery it might facilitate it. I am very much paraphrasing, but I think that is what lay behind it.

(*Lord Flowers*) I can only comment on that from my own limited experience of this one case of sustainable development. I had no difficulty in finding out that there was support for the idea round the House. That was my own private enterprise. When I presented it to the Leader of the House I was treated with great courtesy and seriousness. The matter was discussed and the answer came back, yes, in principle, but we have a problem about the staffing, we have slight problems about the terms of reference, would you please think a bit more about that—that was nothing—but the problem of staffing is more serious. The staffing might possibly have been dealt with by a variety of means except that your committee, my Lord Chairman, was about to be set up and it was deemed appropriate to leave the question hanging about until you had reported. I understand now that when you report whatever you say will go to the Staff of the House Sub-Committee to decide. I think they could have decided in the first place. I do not like this sort of chain of putting it off indefinitely. There was no difficulty about getting the thing in principle agreed to. I am perfectly content with that. I think the staffing thing is a hiccup due to the timing.

116. I do not know whether perhaps you would like to add anything about the proposal of the Parliamentary Office of Science and Technology which is referred to in your report?

(*Lord Flowers*) If I may. I am *parti pris*, I suppose, because I was one of those who helped to bring it about, or rather the Nuffield Foundation, of which I am chairman, were the first to produce a sizeable amount of money for it. Those of us who took part in launching it and guiding it thereafter believe that there is genuine need for a service that is of a distinct kind from what is provided, for instance, by my select committee to inform Members of both Houses of Parliament of topical issues in science and technology by preparing in the first instance the briefing notes, four pages of fairly readable, condensed briefing, about topics that are in the public eye or that are about to enter Parliament quite soon. I believe it is the case—although what the result of the Commons questionnaire will be I do not know—that these briefing notes are widely appreciated in the Commons and, as far as I know, in the Lords also. POST has the ambition because it was set up with the Office of Technology Assessment in the United States Congress in mind as an example to try to do studies that could be called technology assessment. I am not so clear that there is a role for it

*1 July 1991]*

LORD FLOWERS AND DR R H WALTERS

*[Continued]**[Chairman Contd]*

doing that. I think the Select Committee could probably do it better. To say because there is something in Washington that does it, and does it very well, quite such a thing is needed in this country and to the same extent is pushing it a bit because of the constitutional differences—in both senses, make up as well as constitution—between Congress and the British Parliament. However, I am in no doubt the briefing notes and the more modest studies they are nowadays attempting to do which rely upon the contacts the minimal staff at POST have with the scientific community as much as on written scientific documents are very worthwhile and that Parliament ought to adopt it as its own. As chairman of one of the foundations concerned, may I say that I do not believe for a moment that foundations will agree to continue to fund this. They have funded it for three years to get it off the ground and to prove to Parliament it was something of value to Parliament and which Parliament would have to pay for in future itself. It is pie in the sky, I think, to imagine that foundations will continue to fund it. They will not. They might, I dare say, say: if Parliament can find only half the money for the next few years, we will find the other half for a few years, but that will be the end. The present level of funding is approximately £200,000 a year, which split between the two Houses—I think the interest is about equal—would be £100,000 a year each. One would hope there would be modest expansion of its activities because it is operating at about the minimum level it can for obvious reasons. I do not want to hazard a guess

about what the ultimate costs to either House would be, but I do not see it growing all that much. I very much hope you will feel from your own experience and from the evidence you have had that it is a worthwhile activity and should belong to Parliament and be paid for by Parliament.

117. The beneficiaries of POST would be the members of the House of Commons and of this House as a whole, or would it be of benefit to members of your select committee?

*(Lord Flowers)* If a POST briefing comes out at the right time relative to the start of one of our enquiries it could be quite helpful, but not in the course of an enquiry, no. POST has been most successful in things like: my God, a war has started in Kuwait, what is going to happen if the oilwells catch fire? And it brilliantly did that right at the beginning. As soon as there was actual trouble it followed up very quickly with a fairly sober assessment of the likely effects. Another occasion is when embryology suddenly burst upon us in legislative terms, and it produced an excellent summary of what was involved. It did not have to do any research; it just had to get hold of the right people to say, how do we best explain this in simple terms, terms just right for sixth form children taking A level—which has something to say for the general level of understanding of both Houses perhaps!

Chairman] Lord Flowers, thank you very much. You have been very patient. I have found this a useful session. If that is so the credit for it is very largely due to you. Thank you.



TUESDAY 16 JULY 1991

Present:

Beaverbrook, L	Kearton, L
Boston of Faversham, L	Thurlow, L
Dormand of Easington, L	Tordoff, L
Jellicoe, E (Chairman)	

**Examination of witnesses**

SIR PETER EMERY, A Member of the House of Commons, Chairman of the House of Commons Procedure Committee, called in and examined.

*Chairman*

118. Sir Peter, thank you very much and welcome. It is very good of you to come down-market in this way! I have read the two very valuable reports of your Procedure Committee on the Working of the Select Committee System and on The Scrutiny of European Legislation. If may say so I thought this particular report, given the dryness of the subject, had made a dry subject not wet but extremely agreeable to read but I must not detain you. As you may know, two of our Members are not here today, Lord Bancroft is marooned somewhere in Zimbabwe and should have been here and Francis Pym sends his regrets. As a former Leader of your House, he was very sorry not to be here. I was wondering, could I ask you straight away if you have any general comments you would like to make on your Procedure Committee's enquiry into the Select Committee system; how effective you feel it is? I would also like to know very much what your feeling is about the departmental Select Committee structure and how that is working out in practice?

A. My Lord, may I first of all thank you for inviting me. I am more than pleased to be present and I really only feel I am returning a kindness of Lady Serota's when she came to give evidence to our investigation on the European Standing Committee. I am afraid my Lords I will not be able to give evidence with quite the charm and the ability of the Lady Member of your House. But can I secondly say why I am pleased to be here, my Lords? It is that I have always believed very strongly in a bicameral system of Government. Though you perhaps will not be surprised that I would suggest in the structure of the British Parliamentary system that in the end the elected Chamber will and should have its will prevail. I believe there are a number of ways in which your Lordships' House could perhaps play a greater part and indeed a more useful part in the Parliamentary control of the Executive, a situation I think in the old debating parlance, an Executive whose power in recent years has increased and is still increasing and ought to be diminished. If I start with that, which I am not necessarily certain would be very popular with the Government but if I start with that as a background, you will know the approach perhaps which my Committee has taken specifically with the work we have undertaken. Turning to your direct question on the work of the Select Committee system, this was the first review we had had since the Committee system was instituted at the beginning of

the 1980s. I think the thing perhaps which was most surprising was that when the departmental Committee system was introduced it had a number of very strong opponents, both in Parliament and outside. Now from all the evidence we were able to take there was hardly any adverse criticism of the actual structure of the Select Committee system. There were people who had criticisms of what it might do more or less but on the whole even Government felt it was of considerable use to the operation of Government and to the operation of Parliament. There is no doubt that here is the time in which Members of Parliament have been able to take Members of the Executive, and just as you are dealing with me, sit them in front of them for two and a half hours and cross-question them in a way which, of course, is impossible in questions or in any way on the floor of the House of Commons. Therefore one was able to glean the view that this had been and was beneficial generally to the investigation of the work of the Executive in a way which before the specific departmental Select Committees had been introduced had not operated. There had been, as you know, Sub-Committees of the Treasury Committee but this was a much greater expansion of that work. You then, I think, went on to ask me did we think they were effective, I think the answer to that is yes, we did and I think I have made that clear. You said what were our general conclusions? Well our general conclusions were that on the whole there were not very many major ways in which we, in the House of Commons, felt these could be improved. We did not think they needed more staffing, we were pleased with the way the Clerk's Department was able to staff them. The Opposition was pleased with the way in which time was available to them to put cross-questions to the ministers and to deal with the general work of the Committee and, perhaps in Parliamentary political terms one of the strangest things is that the vast majority of the reports of departmental Select Committee were unanimous reports irrespective of the political complexion of Members of that Committee. Therefore I think one could claim they have been a considerable success.

119. Thank you very much, Sir Peter. Thank you too for what you said about our bicameral legislature and about the role which this House might be able to play. I would very much like to ask you in that context whether you have any particular views on our own Select Committee system here? I think the thought behind it was that it would have been a

16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Chairman *Contd*]

mistake for us to try to replicate or duplicate the Commons' departmental Select Committee system. What we have as permanent structures are, as you know, our European Communities Committee currently chaired by Baroness Serota (and thank you for the tribute you paid to Lady Serota), and the Select Committee on Science and Technology (on which Lord Kearton is a very prominent Member indeed) and I suspect you are aware of the work they do. Do you feel as far as the two Houses are concerned, and their relations and workings are concerned, that it is right not to try to duplicate your departmental Select Committee system in this House? Have you any particular comments on the two main Select Committees which we have, Standing Select Committees, as it were? We also from time to time as you know establish *ad hoc* Select Committees. I would also welcome any comments you may have as to whether there should be in any way a closer relationship between those Select Committees which we have and your Select Committee system in the Commons.

A. My Lord, it seems to me the first and the third questions are highly related.

120. Yes.

A. I believe you are right in saying to attempt to duplicate the work of the departmental Select Committees in the House of Commons in exactly the same form in the House of Lords would in fact be duplication. It would be highly unpopular, I think, with Government having to service the two Committees in exactly the same form. But, having said that, I would suggest to you that in many instances it is most unusual for a House of Commons departmental Select Committee to get through all the subjects that it might wish to enquire into in any one session. I have specifically, before coming to this Committee, talked with a number of Chairmen and they are agreed there are always subjects which they feel would be worthy of investigation which time alone has not allowed them to pursue. One therefore wonders whether there is not a way of perhaps co-ordinating the work of the departmental Select Committees in the House of Commons with some structure here in the House of Lords which might be interested in looking at subjects which are not being dealt with directly by the departmental Select Committees. To say quickly how that would be achieved is not the easiest, of course, of questions to answer and I posed it to myself because I was certain your Lordships would put it to me. Talking with the Chairmen, and let me take the Chairman of the Home Affairs Committee, where as you know the powers of that Committee are being slightly extended to deal with the legal side of the Home Office affairs, he felt if there was to be any approach from the House of Lords in a way to co-ordinate with some of the work they were doing he would find that quite acceptable. Therefore, I think, it must rest not with me to suggest how that would be done, just in the same way I do not think it is for me to criticise the Sub-Committees and the Committees you have established here. I know of their work, and certainly the work of the Science and Technology Committee

is renowned way outside this House and Parliament generally and one cannot but give credit to it. Indeed, on that latter point you will know my Committee made a recommendation that in this instance it might well have been useful for us to have a joint House of Lords/House of Commons Committee because it is not an immensely political matter but it is one which again I felt might have benefited by joint action. I am sorry the Government did not take that recommendation but have taken the subsidiary recommendation. My last word on this is not to reject it because it has never been done, it might seem strange with you down the passage and we are up here, and vice versa, but I would hope we could find a way of co-operating to a greater extent.

Lord Tordoff

121. It seems to me the major difference between the Committees of the two Houses is your Committees tend to be structured on a departmental basis, in other words in a vertical way, whereas ours tend to be structured on issues or ideas which go horizontally across a number of Ministries. I wonder how your suggestion of the House of Lords' Committees somehow picking up the issues that have been identified in your House would fit into that basic structure? I am not saying I feel this is a rigid shape of Committee we have to maintain at all costs, I am wondering how it would fit in?

A. The last thing I want to do is duplicate because that would be nonsensical. I was wondering whether in any one of your broader Committees which are able to look at a number of different Ministries, the Chairman might discuss once, twice or three times a year matters to be dealt with by the departmental Select Committees, their programme being structured to a number of weeks or months ahead and there is the thought then there may well be matters which your Lordships' Chamber may consider are important but not being dealt with by the relevant Commons' Committee or, indeed, suggestions being made from the lower House which might appeal to your Lordships' House. It seems to me this must be done in a matter of co-operation and we ought not to reject it because it is not quite as diametrically driven as it has been in the past, with the separation of powers we ought to get over that and work to a greater co-operation of powers.

Lord Boston of Faversham

122. Could I follow up on what Sir Peter has just been saying to us. I am wondering whether Sir Peter has it in mind there should be some channel of communication, a regular standing channel of communication, set up to enable the two Houses to do this, to identify particular subjects for investigation and to see whether it is possible for them to be done in either one House or the other House? Secondly, allied to that, Sir Peter is probably aware in the course of our public proceedings here there has been the suggestion supported by several witnesses to the Committee for possible *ad hoc* Committees to go into major matters in addition to our two Standing Select Committees, on the



16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Lord Boston of Faversham *Contd*]

European Communities and Science and Technology. I am wondering whether Sir Peter has had a chance yet to give any thought to the possibility that such *ad hoc* committees might be a vehicle for these enquiries?

A. Might I just ask Lord Boston when he is talking about *ad hoc* committees, was he meaning that to be an *ad hoc* committee appointed purely by your Lordships' chamber or a joint committee with both houses?

123. The proposal as it stands is for *ad hoc* committees to be appointed by this House.

A. That is what I thought and what is what I had read. I see absolutely no reason why there should not be *ad hoc* committees set up. You have the powers to do so and, indeed, if there are considerable issues of interest and issues of state which you consider worthy of investigation I would feel very foolish to suggest you should not investigate them, in fact I would have thought it was part of your duty perhaps so to do. It may well be, if I can take this a step further, we should not neglect there have been joint House of Commons/House of Lords Committees on specific subjects, one in particular on the Indian Office and the affairs of India, a joint Lords and Commons Committee which ran, I think, from about 1929–38. It is not as though we were breaking absolutely new ground, it is just ground that has not been used in recent times. It was because of that that a recommendation for a joint Lords and Commons Science and Technology Committee was able to be made without it being a great new precedence.

*Chairman*

124. In relation to this question of—

A. I neglected to answer one particular question and I apologise, that was how would one correlate or co-operate. I am delighted you have Mr Terence Higgins behind me who is the Chairman of the Liaison Committee of the House of Commons. I am sure I need only remind your Lordships the Liaison Committee is made up of the Chairmen of all the Committees within the House of Commons. There is a body which already exists in our chamber which you could communicate with if you wanted to see about how this might operate if you wish to pursue that. It might well be a new approach, just as we will be debating on Thursday, a new precedence for the Auditor General, who actually most people forget is an officer of Parliament, he is not an outside organisation, he is actually an officer of Parliament, whereby his office might be used more fully by the Departmental Select Committees and this is going to be co-ordinated with the PAC, the Liaison Committee and the Chairmen of all the Select Committees. There is no reason why if you wish to take part or want to co-ordinate with a departmental Select Committee in the House of Commons there is now a channel by which you could at least start this process if you so wish.

125. Thank you very much. I think, Sir Peter, there was a suggestion made about the Liaison Committee, Mr Higgins' Committee, being a

possible point of contact. We do not have any such body at the moment in this House and it is a matter we will be considering and if it were decided to set up our own Liaison Committee and to supervise, as it were, the Select Committee work that might be a normal bridge I would have thought between the two Houses in this field. On the question of "jointery", could I pursue that with reference to two areas. You mentioned our Select Committee on Science and Technology and its high standing and also the decision not to go, I think, for your favoured option which was a joint Committee of both Houses but rather to establish a Sub-Committee of your Education, Science and Arts Committee. It would seem to me there would be a strong case for consultation between that Sub-Committee, if it is established, and I am glad to hear it has been established—

A. It will be on Thursday, or it should be on Thursday.

126. And our existing Select Committee on Science and Technology, would you have any comments as to the best form for that consultation? Should it be purely informal or might there be a case for an occasional meeting of the two bodies?

A. I would personally welcome any co-operation and co-ordination between the Sub-Committee when it is established and whilst I was slightly optimistic, both sides of the House are in agreement, I think, with the recommendations which are on the Order Paper which will be debated and I hope passed on Thursday. I must not pre-judge what the Chairman of that Committee may feel or indeed the two Members who will be appointed specifically to deal with Science and Technology. I think I only remind your Lordships that the preference of the Procedure Committee for a Joint Science and Technology Committee was that the majority of Members of this departmental Select Committee on Arts, Education and Science were not massively interested in science, they were much more interested in the problems of education. Therefore, we have made the recommendation that there should be two appointed specifically to consider the matters of Science and Technology with other members of the Committee to form the Sub-Committee. I would have thought it would be nonsensical if the work of that Sub-Committee was not in some way co-ordinated and not duplicated with the work of the Science and Technology Committee of the House of Lords.

127. In the same context I have noted the decision that the responsibilities of the Lord Chancellor's Department and the Attorney General's Office should be brought within the ambit of your departmental Select Committee on Home Affairs. I would like to ask again in that context whether your Select Committee on Home Affairs will have the necessary resources to consider all the various range of matters which will fall within their purview and whether again, in this instance, there is a role which this House might or should play in this particular area of investigation and study?

A. The answer to your first question is they consider, yes, they have the facilities and the back-up.

16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Chairman *Contd*]

The second I think is something which I should only hint at—I cannot be specific—but it would seem to me in my conversation with Sir John Wheeler—who is the present Chairman—that he would not be in any way averse to discussing with anybody your Lordship's Chamber would wish to appoint to see if the oversight of home affairs in the legal departments was done as efficiently and properly and as fully as was humanly possible. I am certain that is his view. I think the only thing I would want to put in as a caveat: we would I think want to try and structure a system which did not lead to any competition or any sort of feeling that we were more superior than you or you were more superior than us. I do not see why it should happen but with all human affairs I think it is right to just put that as a caveat which one would have to ensure one overcame.

Chairman] I think we would all endorse that caveat.

*Lord Dormond of Easington*

128. May I come back to the previous question put to Sir Peter and the response which intrigued me. When the Chairman was asking about this House's attitude towards a departmental Select Committee in the House of Commons, correct me if I am wrong but I think Sir Peter said that there will be a number of areas—or there could be a number of areas—where the Commons Select Committees would welcome an investigation from this House really, perhaps simply because the departmental Select Committees would not have the time to do either a second or third enquiry or whatever. Was that a correct assumption?

A. Yes, what I was saying, if I may give an example?

129. Sure?

A. I served for nine years on the Trade and Industry Select Committee and during that period every year there were a number of subjects on our rota which we wanted to investigate. One which immediately comes to mind was the work of the Press Council and the ownership of papers which fell within the Trade and Industry Committee which many of us felt was very important and was likely to become more important with the monopolistic aspects, yet we never got round to looking at it. I would have thought that might well be a subject, as an illustration, which would attract your Lordships' House to have investigated at that time. So I am implying there are subjects which are not always covered by the House of Commons Select Committees.

130. I was wondering then about the sheer mechanics of it because presumably at the beginning of the Parliamentary session there are 12 departmental Committees?

A. Yes, well there are meant to be 14, but one is not appointed at the moment.

131. Yes, say 14, the mechanics presumably would be something like this: at the beginning of the Parliamentary session each departmental Select Committee would consider the subjects and the areas or whatever it was going to consider and then someone

would need to have a look at all of the departmental Committees and, say if there was one more, that is another 24 topics which might be investigated, that is the first stage. Then the second stage would be somebody would have to suggest sending them to the House of Lords perhaps for the House of Lords to consider whether any of those would be worth considering in this House. I may be wrong but perhaps I could ask Sir Peter would that not create some kind of difficulties in the mechanics of it.

A. It might.

132. I am intrigued by the answer.

A. I am trying to suggest by co-operation between willing men of good will that that need not be. You ask me how do we take this a stage further. If via the Liaison Committee, Lord Aldington—who is the Chairman of your European Sub-Committee on Finance, Trade and External Relations—wanted to talk with the Chairman of two of the departmental Select Committees, or again if Lord Ezra as Chairman of the Energy and Transport Sub-Committee wished to talk with the Chairman of the Transport Committee or the Energy Committee, it does not seem to me it is past the wit of man to find a way of co-operating in which it would be quite evident that the Lords were not necessarily picking up the dregs of this but there was a degree of co-operation. I would have thought that ought to be examined.

*Lord Tordoff*

133. Perhaps this is a question we ought to put to Mr Terence Higgins when he gives his evidence. Might it not be that the sort of topics we ought to be considering are those which a number of departmental Committees within the House of Commons feel have common ground and might be better investigated by an *ad hoc* committee of this House looking across departmental frontiers? Do you think the mechanism exists at the moment or will need to be set up to produce such subjects?

A. I think Lord Tordoff has a very good point because one of our difficulties in the Commons is the departmental structure and therefore where there are issues which cross over a number of departments, we have never appointed a Sub-Committee, which we could have appointed, to deal with these. We have never done that in my judgment because the departmental Select Committees have always been so busy with the subjects they have decided upon that they have never felt they needed to move in that direction. Therefore if your Lordships' Chamber decided to do that I see nothing wrong with that at all.

*Chairman*

134. Perhaps I could give an example or two in that context, Sir Peter. We sent out a questionnaire to Members of this House as we started work and one of the questions related to the desirability or otherwise of establishing the occasional *ad hoc* Select Committee in addition to the Select Committee on the European Community and the Committee on Science and Technology. On the whole the majority



16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Chairman *Contd*]

view which came back to us—I am paraphrasing—was that we should from time to time establish such Committees related to those areas where this House can bring special expertise and knowledge to bear, areas such as education, the environment, aspects of economics and social policy and so on and so forth. I think you have, by what you said, reinforced me in my view that if we were to establish an *ad hoc* Select Committee dealing with a matter which falls strictly within the purview of one of your departmental Select Committees that is best done in rather close consultation so there is not a duplication. Likewise, if we are thinking of establishing an *ad hoc* Select Committee which ranges across, or is dealing with the issues which range across, more than one department, this would be unlikely to duplicate the work of your departmental Select Committees. Even so there would be a case for consultation beforehand to see that it does not impinge in any way, or in any harmful way, on what you already have in mind or have in train or are contemplating?

A. Yes, sir, and yes, sir.

*Lord Tordoff*

135. Again, just to pick up that point: I notice in your paragraph 53 on the question of a separate Subcommittee for green issues you rejected the suggestion there should be such a separate Committee created on the grounds that: "We believe all the arguments regarding the integrity of the departmentally related system apply equally to the creation of a separate Committee on green issues." Would you perhaps consider that is precisely the sort of thing this House might consider doing as something which ranges across a wide number of departments?

A. Of course I would not in any way debar your Lordships from considering that on a wider basis but I think I would be quite wrong if I did not say to you that many environmental issues and green issues have been very well studied and looked at by the Environment Select Committee. They, in giving evidence, did not lead us to believe there were issues of a green nature which they were not willing or able to undertake. In that instance, if I may just say in parenthesis, there are of course times when different Committees in the House of Commons have had the same interests. If I think for a moment of iron and steel in Scotland and in Wales, as opposed to the whole of the United Kingdom, and when either the Welsh departmental Select Committee or the Northern Irish or, again, the Transport Committee have seen an interface with another departmental Select Committee. In my judgment there has never been any difficulty in coming to a fairly reasonable *modus operandi* and allowing the Select Committee which wishes to do an enquiry to do so.

136. Before we turn to the scrutiny of European legislation, which is very much a function of both Houses, could I ask one further domestic question of you, Sir Peter. I have noted the difficulty about establishing a Scottish Affairs Committee dealt with in your report. Would you see any utility, even of a temporary nature, as long as that inability exists,

would you see any problem in establishing in this House a Committee on Scottish Affairs? It is not something, I say straight away, that has been urged on us by our Members even though we have a strong contingent from north of the border.

A. I would only highlight—I was looking for the exact words—that my Committee suggested that there was a weakness in the system. There was no Select Committee looking at the Scottish Office and we urged the Government to see again if there was not a way of bringing one into existence. I believe I am not revealing any great secrets when I say they did try again without any success. I believe it is a weakness of the system. If the House of Commons is unable to do that, I am afraid I must allow you to draw your own conclusions.

*Lord Tordoff*

137. Would it, however, Lord Chairman through you, be intruding on your private grief for us so to do?

A. I would have no private grief in that direction.

138. I meant the House of Commons as a whole. I say that because it seems to me this is a delicate issue in the House of Commons at the moment and perhaps angels might fear to tread in this even if noble Lords do not!

A. With one great expert on the use of the usual channels in another place I doubt whether it would come into operation even in your Lordship's House if it was contrary to the wishes of the usual channels in both Houses. One would I think have to say it is something certainly worthy of investigation.

*Lord Kearton*

139. One of the things which is interesting to us is the effectiveness or influence of Select Committees, and in your opening statement you mentioned that the Executive tends to get more powerful and under less control than it used to be and the departmental Committees, I imagine, were set up in order to have more influence on the Executive. Would you say you have had that influence or is it simply the case that you are just more well-informed?

A. No. We believe we have had an influence. We have direct evidence of where we have had an influence. In fact it is interesting to note that the Government have been seen actually to move in a direction in which they could judge the recommendations the Select Committee were going to make before they actually made them, so they were not being pilloried. They would deny that, I am sure, but we have some evidence of that. Again, you will find that several very senior civil servants, including Sir Douglas Wass who ran the Treasury, were against the setting up but said they had proved to be of considerable use in making us think of ways in which we had not been willing to think previously. The Ministers who came before us said they did not always like it but felt it was of great use to them in running their departments. The reports are not necessarily debated on the floor of the House, it is just the publication of these reports that has frequently

16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Lord Kearton *Contd*]

had considerable influence on the Government. I say that without fear of contradiction.

140. It is very encouraging. I, for one, feel our own *ad hoc* Select Committee reports have some influence but it is difficult to judge whether the reports of the Standing Select Committees have had such a similar influence, which is one of the things which concerns us.

A. Not every report has. There are some which the Government have rejected but again it has put a spotlight on subjects in a way which never existed before. Even where the Government has refused, I think it has brought subjects out into the open in a way which the present Parliamentary Government ought to try and ensure happens.

141. Can you demand a debate on the floor of the House for one of your reports?

A. No. The answer is we have agreed with the Liaison Committee, and perhaps you will put that to Mr Higgins, the exact number, I think it is three days, which are Select Committee days which usually we have half day debates on. That has been agreed. It is the Liaison Committee who decide which of the reports shall be debated, not the Government.

*Chairman*

142. Could we now turn to the scrutiny of European legislation on which your Procedure Committee reported in 1989 and on which the Government have given their response. I notice your Committee suggested the establishment of, I think, five Standing Committees and the Government in their reply suggested three and then two, which have been set up. I would very much like to learn why five became three and three became two and how the system is functioning. Again in that context I think we would be interested to learn whether the establishment of these Standing Committees is going to mean that the Commons is going to be giving more detailed scrutiny to European Legislation perhaps than in the past, an area which, of course, our own European Committee concentrates on although they deal rather more with the broader issues. Is there a danger in that case—I may not be right in thinking this—of duplication and how best in your view is this avoided?

A. There are a battery of questions there.

143. Right. Do you prefer one at a time?

A. Of course. If I leave one out please remind me.

144. Right.

A. The enquiry recommended five Committees; you, Lord Jellicoe, said you would like to know why it went down to two, so would I. The rumour would have it that the usual channels found it very difficult to agree to the staffing of the actual numbers, not the staff, the actual numbers of MP's to fill the places which had been recommended. I find that difficult and, if it is a reason, wrong because I am worried that with only two appointed the volume of work that these two Committees have will make it unpopular for Members to serve on them, whereas if they had been divided into the five different subjects, as we had recommended, it would have been very much more

simple and we would have attracted the experts into the different subjects willing to serve because it would only be Treasury or Agricultural matters being dealt with rather than the hotch potch of matters being dealt with by the two Committees. Lastly I find it rather strange that we actually had on the Order Paper that we were going to have three and then that went down to two, again the membership, the numbers involved, was the argument given on the floor of the House. I did have to point out I found it very strange they had increased the numbers of the two so instead of having three Committees of ten we had two Committees of thirteen and to have altered that for four people seemed to me a very strange argument. I have to tell you my Committee, in co-operation with the Lord President, is carrying out a review of the working of these Committees. The achievements which I think I can say are that yes they have brought a much more detailed look at the legislation than was possible on the floor of the House. We have introduced, as you know, the cross-questioning on a Select Committee basis for up to an hour of a minister at the start before the debate actually begins. We think that is a way to elicit information which had never previously been available on European Legislation and we also have ensured the right of any Member to attend to speak not to vote. I am sorry that the latter is not used very often, because part of the objective was to encourage more Members to attend and take part in the consideration of this Legislation. So I think my final reply to you is they have been a modified success. They have taken a lot of work which was done late into the night off the floor of the House of Commons and allow it to be considered at a reasonable time by people in a much more detailed manner.

145. Thank you very much indeed, Sir Peter and because I asked you a battery of questions I think there is one which you have not yet turned your mind to.

A. Probably two!

146. That is whether the new procedures which were introduced will lead to more detailed scrutiny of European Legislation, a field in which our own European Committee is very active and whether this could lead to some duplication of effort and if so how best is that avoided?

A. The answer to your first question that I left out is yes, Sir, it is bringing a more detailed investigation. I cannot without close analysis at this stage say whether a greater degree of duplication exists because of this than existed before. On the whole it should not be, because all we have really done is translated from the floor of the House to the Committee's upstairs for a very in depth consideration the subject which was going to be debated on the floor of the House anyway. So if there was duplication, that existed in the past. If I might make a suggestion it would seem to me, and I believe it happens, that the co-ordination between the chairman of our European Scrutiny Committee and your own Chairman, Lady Serota, is the correct way of dealing with the possibilities of greater duplication which I am certain both Chairmen would not wish to



16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Chairman *Contd*]

see come about.

Chairman] I very much agree with that.

*Lord Thurlow*

147. Can I ask, I do not want you to anticipate the result of the Intergovernmental Conference but so far as one can speculate it rather looks as if more powers and functions will be assumed by the Commission, more majority voting and so on. Do you foresee that the trend of increased transfer from national Parliaments to the Community will add to the necessity for careful scrutiny by the House of Commons?

A. I am afraid, Lord Jellicoe, I have to say the difficulty of answering that question is when Parliament has little control over the outcome of the decisions it is questionable whether they will investigate it more carefully or less carefully. The argument that the Government put is that it is of great help to the ministers to have the view of the House in allowing them to argue their case with the backing of a Parliamentary view in Brussels. If there is more and more power passed to the European Parliament, and therefore presumably less for the House of Commons and House of Lords—the British Parliament—whether Members will be as interested in the closeness of scrutiny must be a subjective judgment made by anybody in this room.

*Lord Kearton*

148. The House of Lords Select Committee on European Communities has produced an enormous number of reports, some of them in very great depth. It has been pointed out to us by the Clerk of Parliaments how much the paper work has increased. The impression we have is the reports are very well regarded in Brussels and other legislatures which belong to the Community. May I ask you whether the House of Commons has ever taken very much notice of them?

A. You are asking a slightly embarrassing question, Lord Kearton. If I was being diplomatic I should say I am certain the House of Commons wanted to put a great deal of consideration to them. I think in all honesty I have to say not as much as certainly they deserve. However, I believe where perhaps they have had the greatest influence, whether or not it is right they have had the greatest influence, has been with the British Members of the European Parliament—with the MEPs—because that is where the influence has to be carried out, not necessarily, I am afraid to say, with the Members of the lower Chamber.

Chairman] That is an answer, Sir Peter, which Monsieur Talleyrand would be proud of.

*Lord Tordoff*

149. It does lead us on to the question of what progress has been made to meet your Committee's recommendations for closer contacts with European institutions and particularly with the MEPs who seem to be rather left in the cold by Parliament and Westminster. Although I have to say our

Refreshment Sub-Committee has now agreed to admit them to our guest room for a limited period.

A. That is further than my House has gone to, I am afraid, Lord Tordoff. We have, in fact, moved in certain directions. They are invited to sit in on the backbench Committees and Parliamentary Committees, the 1922 Committee and the PLP. I am a bit doubtful about the latter, I need confirmation, but I think that is the case. It is true of the 1922 Committee. We have got the Government to agree that you can now telephone free to Brussels and to the Community and to MEPs which was rather an annoying factor when you were attempting to pursue matters with Europe and you had a large bill at the end of it. There are difficulties about accommodation and shortage of accommodation for Members of Parliament in the lower House, but what I can say, I think, is we are progressing slowly.

*Chairman*

150. I have one final question, Sir Peter, to ask you and that concerns your recommendation XIV in which you strongly advocate the use of the Special Standing Committee procedure in looking at the initial scrutiny of legislation in certain instances. I think I am right in saying, although I may well be wrong, that although this has been advocated in the past it has not been a procedure which has been used in the Commons for quite a long time, I think a bill concerning matrimony in 1983-84 was the last time it was used. Can you say a word about this? Do you think this is a procedure we should be advocating ourselves in this House?

A. May I divide the questions?

151. Yes.

A. My Committee is disappointed it has not been used more by Government. The interesting thing is whenever Ministers have actually used the procedure themselves, and this is a case which has been evidenced with a number of Ministers, particularly the Attorney General, who said quite clearly and gave evidence that it helped him considerably in dealing with legislation and getting the legislation through. However, the usual channels seem to consider that it is a delaying factor and because it must take an extra 14 days or something of that nature it delays the passage of the legislation. I personally would say I think that is a false premise which in fact ought to be much more closely examined. One of the other matters is that often Ministers do not consider the option. I have been trying to press Ministers into actually approaching the usual channels to use this process. I would point out I think you do have to be careful, it really is not any use if it is a highly political, contentious issue because what one is seeking is information not political stances or opinions from your Ministers or from the witnesses you may call. The second part is would this be useful to your Lordship's chamber?

152. Yes.

16 July 1991]

SIR PETER EMERY, MP

[Continued]

[Chairman *Contd*]

A. I cannot make a judgment on behalf of your Lordships. All I would say is it seems to me it makes it much easier for the Members considering legislation to come to understand it. To be able to get some of the problems, some of the questions, out of the way at the beginning must in fact ease the passage of that legislation. That is a generality, whether that will apply to your Lordships' chamber must be a judgment, my Lords, for you.

*Lord Tordoff*

153. Can I just follow that by saying, arising out of what you have been saying about the Standing Committees and the like, have you any thoughts on ways in which, together or separately, we might contrive the flow of business throughout the Parliamentary year so we do not have this great crush of legislation rushing into the House of Lords very late in the session?

A. I might say, Lord Jellicoe, I am delighted to have that question because may I just remind you the Commons has appointed a new Select Committee to look at the timing of legislation and our sittings and everything else concerned with the passage of legislation and the business of the House, both private and public business. My Procedure Committee could not deal with the private business and last year private business took about 23 per cent of prime time. Why I remind you is that I believe we will be looking at the whole structure of Parliament. When it is the Budget, the Finance Bill has to be in the months of March and April and then we have to have an estimates debate in November, are there not ways in which we can alter this? The Treasury might hold their hands up in horror but once the initial step has been made, it might only be difficult for the first year. The Scottish Members who never see their families because the schools are up in July in Scotland would welcome massively an alternative to the calendar. I think the way in which my chamber condemns your chamber to have to deal with as much legislation in the heat at the end of the session in July would be considered, if I was a member of your chamber, very unforgivable. If we can find ways of alleviating that perhaps this Committee might be able to give evidence and some thoughts to the House of Commons' Committee under the Chairmanship of Mr Michael Jopling. I am certain it would be welcomed.

154. Perhaps one ought to say that this very day at the beginning of business there was a considerable exchange in the House of Lords on the fact that the Finance Bill was not yet, in fact, with us when the law dictates that it should be in the House of Lords by 5th July. That might be a consideration that can be looked at by this new Committee.

A. I can only tell you I was sitting until a quarter to three this morning in order to try and get it to you more quickly.

*Lord Kearton*

155. I was very struck when you said at the beginning that your reports were almost always unanimous. Considering the composition of the House of Commons is that an amazing tribute to the chairmen of the different Committees or is it because commonsense prevails over all other considerations?

A. I am certain on my Committee it reflects entirely on the Chairman. Seriously, of course there are divisions about part of a report but what is more or less without exception is the full body of that report is agreed by all sides. It may, when it is debated, say: "We are sorry we lost out on this part because we think the report would have been improved if that was in it but we can still go along with the overall generality of the recommendations made". I do not think it has to do with the ability of the Chairman but I think strangely it has to do with the fact that all Members of the House of Commons are much more serious than the public would actually give them credit for being. When you take them away from the party political battle and they come to consider things just as a matter of logic in committee there is a much greater degree of understanding.

*Chairman*

156. Sir Peter, you have responded to our questions with such verve and clarity I find you have been stretching the truth when you say you only left Parliament at 3.30 this morning. We accept that. Thank you very much indeed, you have brought the great width and depth of your Parliamentary experience to our session and we are most grateful. Thank you very much.

A. Lord Jellicoe, may I thank your Committee for dealing with me most kindly. Thank you.

Chairman] Thank you very much, Sir Peter.



16 July 1991]

[Continued]

### Examination of witness

MR TERENCE HIGGINS, A Member of the House of Commons, Chairman of the House of Commons Committee on the Treasury and Civil Service and of the Liaison Committee, called in and examined.

#### Chairman

157. Thank you very much indeed, Mr Higgins, for coming to our deliberation this afternoon. We know that like Sir Peter you bring to us very considerable experience, not least as the Chairman of the Treasury and Civil Service Committee. You have a great deal of experience, as Chairman of the Liaison Committee, of the workings of the Select Committee system in your House. I would be—and I am sure we all would be—very glad for any general observations you would like to give us about the workings of that system?

A. My Lord Chairman, may I first of all thank you very much indeed for inviting me to give evidence. Sir Peter's Procedure Committee was kind enough to suggest that the Select Committee system, which was radically reformed ten years ago, has been a considerable success. My own feeling very strongly is that it has made a very big difference indeed to the life of the House of Commons generally. It was suggested earlier that there was a change in the balance between the Executive and Parliament. One would not want to exaggerate that but I do not think there is the slightest doubt that the new system has increased accountability on the floor of the House. It is a fairly unlucky or inept minister who gets himself into serious trouble at the end, the winding up, of a debate or at the beginning because the system of questioning is one where you never really pin somebody down easily because the subject changes from moment to moment. That is a vastly different thing from having the minister in front of you, as I am now, for perhaps two hours or more and where a particular point of weakness is seen and you can pursue it until you discover what the answer is. I think in that sense it has clearly increased accountability. I think it is very much the departmental system which has been the strength of the new arrangements. It does mean one can concentrate on an area and the Committee builds up considerable expertise. There have not been all that many Chancellors of the Exchequer since I have been on the Treasury Committee, I think four, but some of the other Committees have long outlasted their Secretaries of State, there may have been seven or eight in front of them so the Committee has much more experience of the subject, very likely, than the Secretary of State. It is also true it is very much an all party approach. It is very strange, the Debate downstairs, facing each other, the atmosphere is very different from sitting all round. Sir Peter's Committee dealing with Procedure is relatively uncontroversial; the Treasury Committee is controversial and ranges from my colleague Mr Brian Sedgemore through to Mr Budgen. Those of you who know either of them will know it is widespread. With only two exceptions since I have chaired the Committee we have had unanimous reports and it does carry very much more weight. The reports themselves are in much greater depth and the House is better informed than was previously the

case. It is also true to say the impact of television has to some extent made a difference as far as the intensity of questioning of the Chancellor of the Exchequer at Budget time and so on. It is true to say that the system has worked pretty well and undoubtedly has increased the general level of accountability and the general level of debate both in terms of reports and in terms of debates on the floor of the House itself.

158. Thank you very much, Mr Higgins. Could I now turn to the particular Committee you are chairing in which capacity you are kindly with us this afternoon, namely the Liaison Committee. In my ignorance I do not quite know when it was established and really what its terms of reference are. I surmise it has a general co-ordinating role of the work of the Select Committees and I know it has a role in the choice of Estimate Day debates and so on but I think we would all welcome more information about the Liaison Committee. One reason for that is that we ourselves will be considering whether we need some such mechanism ourselves.

A. Yes, the Committee essentially was established when the overall structure was reformed and it was given the task of co-ordinating the work of all the Select Committees, not just the departmental ones but all the Select Committees. It is comprised entirely of the Chairmen of those Select Committees and they themselves elect their own Chairman and with no replacements if one of them is absent so you do actually have the Chairmen there generally speaking. Its formal tasks are fairly limited on the other hand, as you have just suggested, to decide which of the Estimate Days shall be devoted to which Committees—that itself was a change which took place as a result of the Procedure Committee I chaired some years ago. Previously the House had lost virtually all control of debating public expenditure. This matter had fallen into the hands of the official Opposition and the Supply Days had become official Opposition days which now formally they are. We have established a new system of Estimate Days, only three at the moment, which are divided into six half days. The Liaison Committee has the task of deciding which of the Estimates should be debated. Its second task is more difficult, it is to allocate the scarce funds available for overseas travel by Select Committees between competing uses. In that context it is easier being the Chairman of the Treasury Committee than of the Liaison Committee. Nevertheless on the whole we manage to work a reasonable system as far as that is concerned. More generally there are a series of *ad hoc* issues which come up and effectively the Chairman of the Liaison Committee becomes the interface of the Government, his opposite number being the Leader of the House of Commons and therefore whatever particular co-ordination problems come up or if there is a particular session for debate on the subject then the Liaison Committee will ask me to pursue

16 July 1991]

MR TERENCE HIGGINS, MP

[Continued]

[Chairman Contd]

that matter with the Leader of the House and we will seek to sort out any conflicts of interest, any problems which the Committee has or the Committee system generally has. The Liaison Committee did, in fact, on previous occasions before Sir Peter's report produce two, I think it may have been three, of its own reports on the way the system was working but obviously in much less depth than the Procedure Committee's report you were discussing a moment or two ago. It does fulfil a useful role and without any set terms of reference other than the ones I have just mentioned.

159. We discussed, and you will have heard, Mr Higgins, at some length with Sir Peter the whole area of co-ordination between the work of the Select Committees in both Houses and the desire to avoid unnecessary and pointless duplication. I was very encouraged, if I may say so, by the strong advocacy by Sir Peter for consultation both as regards the setting up and the continuing work of the Select Committees of both Houses. I should be very glad to learn your views on that and any suggestions which you think you would like to make as to how the present system, the *modus operandi*, in this respect could be improved.

A. I think it is true to say, my Lord Chairman, that at the moment, the two systems are working pretty independently and with remarkably little interchange of ideas or co-ordination between them. Clearly it would be helpful I think if they were brought closer together. Having said that I think in our system the departmental Committees do cover virtually the whole range of Government and the number of areas where there is an overlap, I think, is comparatively small. Remember we used to have a different system, we had an *ad hoc* Committee on nationalised industries, overseas aid and so on. But, I think, the strength of the present system in our House has been very much the fact it is departmentally related. They do build up a relationship with their own department without, I think surprisingly perhaps, in the case of the Agriculture Committee, becoming a lobby for that particular department. So the structure is very different. I think there are two particular areas which you might like to pursue in a moment on which there is some scope for co-ordination. One is the one you mentioned on Science and Technology and the other on Europe. Perhaps in due course you might come to refer to those in turn.

160. Indeed. Could we take them one by one, as it were. Our Science and Technology Committee and the newly established Sub-Committee of your departmental Committee on Education, Arts and Science, it would seem to me at least there would be a fairly strong case for consultation of however informal a kind between those responsible for the work of those two Committees so as to avoid unnecessary duplication. I do not know what you feel about this and how this can best be avoided?

A. This is, in fact, a matter which has had a fairly long history and was one of the issues that came up in the Liaison Committee and I was asked to carry out discussions with the Leader of the House and so on. The problem arises because most departmental Committees are specifically related to their

departments and the departments are fairly specifically defined. The one on education and science is, in a sense, a double-barrelled Committee and this has, in our system, given rise to some problems because there has been a tendency, reflecting the membership of that Committee, to concentrate particularly on one aspect of it rather than the other. It was, therefore, suggested that it ought to be split. I was against it being split because it would have broken the departmental structure which I think it is important to maintain. It was then, at one stage, suggested as an alternative there should actually be a joint Committee between the two Houses and I believe some negotiations did take place but did not prove fruitful. Sir Peter's Committee has subsequently looked at it and suggested that might be the outcome. The Government has said it would prefer a Sub-Committee of the Education and Science Committee and it looks as if that is what will now happen. I should explain the only Committees which formally have the right to have Sub-Committees at the moment are Foreign Affairs, Home Affairs and the Treasury Committee. The Foreign Affairs Committee on the whole has not made much use of it; the Home Affairs Committee did but the Chairman of the Sub-Committee has been made Chairman of the main Committee so it is not made much use of; and the Treasury Committee makes a great use of the Sub-Committee. There is nothing to prevent any of the Committees actually getting a small group of Members together and operating independently, it is only the formal position we are worried about. I would have thought now there is to be a formal Committee, a formal Sub-Committee, of the Education and Science Committee, there is considerable scope for that group, with the attention of the Members, to co-operate with this House. I would have thought there is clear scope for them to do so and it would be fruitful given the expertise which those in your own House have in this particular area where, quite frankly, the numbers in the House of Commons with particular expertise seem comparatively limited.

Lord Dormand of Easington

161. May I link that to the question I put to Sir Peter because I am not sure I understand what Mr Higgins has said. If you recall Sir Peter said the House of Lords might consider investigating a topic which was a matter for a departmental Select Committee because there may not be time in a Parliamentary session to consider the second, perhaps the third, matter for enquiry. I posed the question about the possible difficulties of the mechanics and it seems appropriate, Lord Chairman, if I may say so, to ask Mr Higgins about this in his capacity as Chairman of the Liaison Committee. Would the Liaison Committee be in a position to consider representations from various chairmen where somebody might say: "We have two topics here which we feel are of major importance but we are not going to do the second one in this session, that would be a fruitful thing for the House of Lords to



16 July 1991]

MR TERENCE HIGGINS, MP

[Continued]

[Lord Dormand of Easington *Contd*]

consider" even though it is quite specifically attached to a department?

A. I think we are pursuing this very issue on the Education Committee which I think is a special case. As far as the broader issue is concerned, the departmental Select Committees are independent; the Liaison Committee does not have any control over them, it is a consultation exercise. I fear you may have exaggerated the extent to which the programme is known in advance. Some Committees may at the beginning of the year draw up a programme and some Committees have regular events, the Defence Committee has a regular review and the Treasury Committee has the Autumn Statement, but I rather doubt if you go to the chairman of a particular Committee and ask what he is going to do and perhaps whether the two Houses could split it up between them, I rather doubt he would know that far in advance. Quite a lot of the investigations are *ad hoc*. My Committee may or may not decide tomorrow to go into the BCCI issue, for example, and three weeks ago we had no idea it was going to happen. That having been said, clearly I would have thought that if one of your Committees is thinking of doing a major study into a major subject and likely to be less *ad hoc* than ours, then an informal chat with the chairman of the departmental Select Committee at whatever moment, not necessarily the beginning of the year, to avoid duplication is worthwhile.

162. So what Mr Higgins is saying is that that initiative should come from the House of Lords?

A. Yes.

*Lord Tordoff*

163. If I might gently tease Mr Higgins on BCCI, if he had read the debate in the House of Lords in April he may have been less surprised!

A. I hear rumours to that effect.

164. Can I follow up Lord Dormand's question on subjects that can cross departmental boundaries, where there may be the possibility of ideas being suggested from the Commons on matters they would not necessarily wish to touch on on a departmental basis because they go broader and might be better dealt with by an *ad hoc* Committee. Can you think of any mechanism through your Liaison Committee or otherwise where that can be made to happen?

A. Whereas I suggested before it would be a matter for the chairman of the individual Committee because it would be his responsibility, clearly if it is going to be a question that your Lordships are thinking of looking over across departmental boundaries then perhaps the Chairman of the Liaison Committee informally might be the best person to discuss the matter with to avoid duplication. There are very real problems on the matter of duplication equally, for example, between the Public Accounts Committee and the departmental Committees and the Chairman of the Liaison Committee has some co-ordinating function in that respect. Government departments do get fairly unhappy if they find they are giving evidence to

two Committees on the same subject. It is important to avoid that if we are to get the timing right.

165. I accept what you say in terms of the House of Lords perhaps just checking things out with your Committee but is there any chance of the initiative coming from the other way, from your departmental Committees to the House or Lords, or from the group of departmental Committees through you saying: "There is a topic here which ranges over a number of our departments which might be better tackled by an *ad hoc* Committee of the House of Lords"?

A. My problem is I have some difficulty thinking of examples. In the nature of the departmental Committee system they tend to think in departmental terms, so I think if the initiative is coming from your Lordships' House it would be welcomed but is unlikely to come from the other direction.

*Chairman*

166. Thank you. We did discuss previously with Sir Peter the inability up until now of the House of Commons to establish, for whatever reason, a Select Committee on Scottish Affairs and whether there might be some advantage, perhaps temporarily, in this House filling the gap there. I wonder whether you have any comments on that yourself?

A. It has proved immensely difficult to solve this problem, as you know. There is nothing precluding a departmental Committee from looking at issues which affect Scotland, a point which has been made in the debate but I would hesitate to express a view on that. I think one would need to discuss it, as Sir Peter suggested, through the usual channels who have had very great difficulty in resolving this problem. It is, of course, highly party political and does tend at other times to keep us up rather late at night. Since there is no Select Committee, the matter seems to be raised rather often on the floor of the House very early in the morning.

167. By the same token could I ask also about the recent decision that the responsibilities of the Lord Chancellor's Department and the Attorney General's Office should come within the purview of your Select Committee on Home Affairs and whether there is perhaps a supplementary role which this House could play in this context? As you are aware, we have certain judicial expertise in this particular House.

A. Yes, there is again, of course, a history to this matter and when the structure was established it was felt it would be appropriate for a specific Committee to deal with that side of things. Sir Peter has already expressed a view as far as the Home Affairs Committee is concerned, I think they do feel there is a very considerable overlap but again, for the reason you have mentioned, I would have thought there is a very considerable case for your Lordships looking at this area where they feel it is appropriate. Whether you get a conflict of interest at that stage, I am not entirely clear.

168. Could I ask now a couple of rather *terre a terre* pedestrian questions. One is on the Procedure

16 July 1991]

MR TERENCE HIGGINS, MP

[Continued]

[Chairman *Contd*]

Committee which recommended that the taking and publishing of evidence on its own—even if that was not then incorporated in a report or subjected to debate—was of value. Is this procedure in fact quite often followed?

A. Yes, quite frequently. There was some suggestion a little while ago that Committees ought not just to take evidence and publish reports, that seemed to me to miss the point entirely. Our task is effectively to report to the House of Commons and we therefore have a very important function in bringing out the facts in evidence and reporting them to the House. They can then be debated and very often form an informed basis for what the House is discussing. To give you just one example, following the Fontainebleau Summit some time ago, it was totally impossible to establish what on earth they decided, all we had was an unreadable xerox from the President of the Council of Ministers of their personal views. We took evidence on that and reported to the House and the House knew what was going on. We took evidence from the present Prime Minister, the then Chancellor of the Exchequer, on the whole of the hard ecu proposals for the Intergovernmental Conference. That again spelt the thing out in great depth and it is very difficult to find this kind of information at the head of the debate. My personal view is the taking of evidence and its publication is very important indeed and indeed may turn out to be more important than the report itself.

*Lord Kearton*

169. On this particular subject you have just mentioned, the House of Lords Select Committee also took evidence on this subject, including that of Dr Pohl. Was there any conflict between the work of the two Select Committees?

A. No, I do not think so because we did not take evidence from Dr Pohl although we met him. No I thought the evidence you took from him—which got some considerable coverage—was supplementary.

170. The two reports were complementary?

A. Yes, indeed, Sir.

Chairman] Another practical question: we also noticed the recommendation about the value of informal meetings at the start of an enquiry with officials and including ministers and their advisors. This, as far as I know, is not a procedure, which is followed in the House of Lords' Select Committees.

Lord Kearton] The practice is to have the senior officials at the beginning of the enquiry.

*Chairman*

171. As far as ministers are concerned, I do not think it is a procedure we adopt, I would like to know your views?

A. I can think of a couple of occasions when the Treasury Committee has had an informal meeting ahead of the actual enquiry, particularly if it is an area which we are coming to afresh and are not clear what the issues are. On occasions we have done so

with officials as well but more generally, of course, we tend to have an internal meeting with our own specialist advisors to discuss the way in which the enquiry might proceed and that is a pretty normal event, certainly ahead of the Budget or ahead of the Autumn Statement and so on. With ministers it is very rare and with officials seldom but with specialist advisors very often.

172. Again, specialist advisors, their value, their use and do you find difficulty in recruiting them? Is the well drying up?

A. No, I do not think so, I think this has turned out in the event to be the great strength of the system. My own feeling is, which I think Sir Peter's Committee endorses, we do not want a mass of extra internal people. We do have fairly short term appointments which are useful internally and of course the clerks are of an immense help but the specialist advisors have turned out to be the strength of the system because we can call on outside people to come in. They are typically very enthusiastic and give a very considerable amount of time and have immense expertise. This has been an enormous strength either on a continuing basis, if it is a subject which we review regularly, or on a specific individual enquiry. Of course there is some status, I suppose, related to the fact they are the advisor to this or that Committee. They are of course paid a pittance in the event but I was looking around the room a little while ago, and if one had been paying the Committee's advisors on a full-time basis, their normal commercial rate, compared with the Government's advisors, they would probably be paid four times as much. That may or may not be an indication of the comparative quality. It does mean people are prepared to volunteer and give help in this way and I think it is one of the reasons why the general standard of reports has been as high as it has.

*Lord Kearton*

173. It is regarded as quite a distinction to be asked to be a specialist advisor.

A. We have had very few refusals and simply because of pressure of outside commitments. Generally speaking, people have been happy to do so and have done so over long periods of time, putting in an immense amount of work and late hours on top of their normal duties. I think that is a public service which ought to be recognised.

*Chairman*

174. Can I go back to the question of the avoidance of duplication? With the further development of the Commons scrutiny procedure on European Legislation, do you see a danger of duplication, with the unnecessary duplication of the work of our own Select Committee on the European Community.

A. My impression is that the amount of material coming out of Brussels is so great that the risk of duplication is comparatively small and even if it were a duplication that might well be an advantage. If we could turn to the European scrutiny issue, I express a



16 July 1991]

MR TERENCE HIGGINS, MP

[Continued]

[Chairman *Contd*]

purely personal view, I am not in the least bit happy about the set up we now have. It seems to me when this issue was first considered there was going to be a very real problem of manning whatever Committee structure was set up. We already have considerable demands from the existing Committee structure, Members have an immense amount of duties otherwise on constituency mail which continues to grow at an appalling rate, or a very democratic rate I should say. It seemed to me therefore, and I formally recommended this, or gave evidence on this, that the possible solution was to link the scrutiny of European matters on to the departmental system because the departmental Committees have great expertise in the particular area which the European proposals are affecting. We could have drawn the nucleus from the existing departmental Committee into a Sub-Committee augmented with those outside Committees, who have a particular interest in the European aspect of it and they could have concentrated on whatever proposals came up drawing on the expertise from the departmental side from the existing Committee and on the other side from the European Committees of the House. This was not accepted and we came up with a proposal for a series of other Committees, not particularly expert in any way or particularly relevant in any way. That was cut down to three and then two, which seems to me quite inadequate to deal with the mass of stuff coming out of Brussels. Although it may seem early to judge the matter, it is really not too soon to judge this, we went off on the wrong track and ought to think again in that context. It seems to me your Lordships' House is extremely relevant and one ought to consider perhaps a more radical suggestion such as a joint committee that can look at particular departmental arrangements and so on. I am fearful the workload is so great probably the departments themselves are having great difficulty in coping with the authority, and any support and advice they can get from either House, or both Houses together, will be of considerable value. I am not worried about duplication on this. One could pay a considerable tribute to the Committee under Mr Nigel Spearing which does a lot of the work of going through the nitty gritty of this stuff and sorting out which points are controversial and which are not.

175. Whilst we are still in Europe, or half into Europe, could I ask about the travel arrangements to Europe for Members of the European Standing Committees and the Scrutiny Committee and, indeed, Members of the House of Commons who are interested in European affairs. Is this a problem at the moment?

A. We originally had an allocation of funds for overseas travel generally. Committees are, of course, able to travel within the United Kingdom if they themselves decide to do so but it became apparent that the European side of things was of increasing importance and I, therefore, requested the Liaison Committee to conduct negotiations and as a result of that we got a further tranche of money for travel in Europe. The Liaison Committee has the task of allocating the main travel allowance and the

European one. It has been suggested the Committees themselves might be allowed to travel to Europe on the same basis they travel in the United Kingdom, that is to say without any financial limits. I fear my previous Treasury halo is shining at this point. I understand why the Treasury are not wildly enthusiastic for this. The plain fact of the matter is most of these Committees are extraordinarily rigorous in their programmes and involve an immense amount of hard work. I do not think there is any serious danger of them travelling too much at the moment unless we run into severe restraints where we find the existing allocation of funds is not sufficient, in which case the Liaison Committee would ask me to allocate a larger amount but I do not think having the Liaison Committee to look at the proposals does any great harm and probably keeps the Treasury Committee happy.

*Lord Thurlow*

176. Could I ask if in general terms you could say anything about the scale and number of visits in any session made to Brussels, Luxembourg or wherever?

A. If I may I will let you have a note. I do not have the figures in front of me but they are available in terms of various visits and so on. I can easily provide those.

*Chairman*

177. Thank you, I think we would welcome that. Before we turn, and that will be in conclusion, to the question of the treatment of reports and debates on the floor of the House and so on, I would like to ask one general question which relates both to the normal Select Committees, the departmental Select Committees, and indeed to the European Scrutiny Committee and the Standing Committees. I have in mind also the courteous, diplomatically opaque reply which your colleague, Sir Peter, gave to the question whether the very detailed and specialised and careful and well-studied reports of the European Communities Committees, whether they have any impact whatsoever on the House of Commons? Is there a danger that, be it our own select Committees or be it yours, sometimes they are so detailed and so specialised—the reports—they do not have the impact which something briefer and crisper might have?

A. If I can take both points. As far as your Lordships' reports are concerned, clearly the one which was referred to by Lord Kearton a moment or two ago was extremely relevant to our own considerations. Some of the earlier ones on trade and industry and so on have been fairly controversial and attracted widespread interest. I suppose there is a slight formal problem in as much as it would be unusual for the House of Commons to debate the House of Lords' reports; I am not sure if the reverse is true. There is that slight inhibition. It might seem a little odd, although your reports have from time to time been discussed. There may be a slight formal inhibition of that sort. As far as the depth of the reports is concerned, no, I do not think that is in

16 July 1991]

MR TERENCE HIGGINS, MP

[Continued]

[Chairman *Contd*]

danger. I have already said I think the evidence is tremendously important. Some of the reports can be quite brief and cogent, on the other hand some may go into very considerable detail. The Treasury Committee, of course, has a regular programme so we think actually our reports on the Autumn Statement, the White Paper and the Budget over the years are a marvellous historical survey about the way in which the economy has developed and that is not available elsewhere in economic studies. We produced one some time ago on monetary policy which was recognised as being of great importance by everyone right across the economic spectrum. I hope the one on forecasting we are going to do will be received in the same way. Next week we will produce a very long report and also a short one, but of course it depends on what the market is. Some of them are immediately relevant to the House and some are of specialist interest, and some may be more valuable and deeper than anything anybody else is doing because we have better access, very good specialist advisors on the one hand and information which is often not available to outside institutions on the other hand.

Lord Kearton

178. I think all House of Lords' Select Committee reports are ones that try to peer further into the future, in other words they make an opinion about how things will develop over the next two, three, four or five years. In that sense they can be more complementary to the House of Commons' Committees, can they not?

A. Yes, a more strategic look. The Treasury Committee did attempt this some years ago but was interrupted by the General Election and did not continue. We tried taking evidence from all the Permanent Secretaries as to where they thought their departments would be in five or ten years' time. It may have been we should have taken evidence from the Secretary of States' Principal Private Secretaries rather than the Permanent Secretaries but it is quite difficult for us to look at very long term projects. I think your Lordships are probably in a much better position to do so.

Chairman

179. There was a proposal that had there been the staffing resources available for it last year would have been adopted and that was a proposal to establish an *ad hoc* select Committee of this House to report on the economics of sustainable development.

A. Yes.

180. A wide ranging subject. Would you see from the Commons' point of view that would be crossing your own and entering into your own field of jurisdiction? It would be a long-term, strategic approach.

A. I would not have thought there is any real problem here at all and although unlikely it might be as well to have a word with the chairman of the relevant Committee just to make sure you are not both about to set off on the same trail. I think in

practice it is unlikely there will be a duplication but an informal discussion of that kind is always needed, almost a telephone conversation will be sufficient to make sure there is no duplication.

Lord Kearton

181. Could I float a carrot? About two years ago one of the Select Committees of this House did a report on the relationship of Europe with Japan and the relationship of this country with Japan and one of the conclusions which came out was we should encourage inward investment to the United Kingdom from Japan, and I am glad to see we are now doing so. One of the offshoots of that report was if the present trend continued with the amount of United Kingdom industry controlled by the French, the Germans, the Japanese and so on steadily increasing, we could come to a point where we will lose all self-respect, or ethos. At what stage do you decide the limit for inward investment has become intolerable? Is this a subject for an *ad hoc* sub-committee?

A. The departmental Committees have to look at the policy and the infrastructure of the department. It may be a little bit impossible to fit that within the structure, let us say it is a bit dangerous if the department Committees go off into an area that has no clear ministerial responsibilities and where you are better able to do this than we are.

Chairman

182. We have detained you for quite a long time, just as we did your predecessor, could I just ask a question or two about the treatment of reports. First, could I ask whether the Government response is always a written response and if so how soon do you like to get it after the publication of the report? I have seen in one report that you like it either within one month or two months. Is there a set rule here?

A. Generally speaking it will be expected in two months and if there is too long a delay either the Committee chairman or the chairman of the Liaison Committee has a chat with the Leader of the House and asks where it has got to. In terms of response, generally speaking the Treasury Committee does not expect a formal response to some of its reports because it knows they are likely to be debated in the normal course of events, that is to say if we are giving a report on the Autumn Statement that will be debated in the Autumn Statement debate and if we are giving a report on the Budget it will be debated in the Budget debate. The usual thing is for the Government to send a reply which the Committee will publish in the form of a special report, generally speaking without commenting on it. It is, of course, possible for them to say they do not think much of the answer but it, in a sense, becomes an extra report and, one ought to take more evidence. The alternative is for the Government itself to publish a White Paper and that is done quite frequently in the case of the Foreign Affairs Committee. Almost invariably the Liaison Committee has not been



16 July 1991]

MR TERENCE HIGGINS, MP

[Continued]

[Chairman Contd]

happy about publication by way of a written answer unless there is some urgency in that matter and in that case it has been possible to publish an unnumbered White Paper at considerable speed if a debate is about to take place on that subject on the floor of the House. Although there were some teething problems I do not think response has been one of the problems. Whether the response is itself satisfactory is another matter. Having said that, we sometimes find the Government response seems to be pretty unsatisfactory and unsympathetic and then suddenly in six months' time you find what you recommended has become Government policy! Certainly in the economic area you might make comments about the Budget one year, the press says "Treasury Committee attacks Chancellor" and the next year this is the perceived wisdom. You must not put it off too much in terms of initial response, it is a question of experience.

Lord Kearton

183. We published in March a report on Innovation in Manufacturing Industry and the Government has accepted it almost *in toto* except anything which means spending money and the Secretary of State for Trade and Industry has made a whole series of policy statements which reflected the conclusions of this report. It may have been coincidental but we do not like to think so.

A. Maybe the department is ahead of the game and that is what we welcome. That is an advantage.

Chairman

184. Could I, in conclusion, not least because of your role as Chairman of the Liaison Committee, ask you what your thoughts are about the debates on the floor of the House on the reports?

A. I think the impact of the Committees' reports on this, it is under estimated. There are some Committees whose reports are debated automatically, the Defence ones are debated at an annual regular debate which takes place, and the Foreign Affairs ones might well be debated when the usual broad ranging Foreign Affairs debate comes up. In addition to that we have the debates on the Estimate Days confined to a fairly narrow area. Take the other day, we had a report from the Foreign Affairs Committee on the questions of the Kurdish refugees which was immediately debated on an Estimate Day and in addition to that the House may well have a general debate where the Committees' work has been of use. For example, on acid rain or something of that kind where a debate is eventually granted I will have to request that can be debated. There is also the question of tagging on the Order Paper particular questions which are relevant to the debate that is going to happen anyway. All of this provides a better foundation for the level of debate on the floor of the House. Having said that, what the Committees would like are all their reports debated all the time. If I could just add to one of the points I made in an earlier answer: the Government has probably come to recognise after a decade of

experience that it is unlikely to get a report saying everything the Government is doing is marvellous but there are a number of areas where it becomes a co-operative effort and one of these features has been the part the Civil Service has been playing in these debates. Sometimes when they are appearing before the Committee, the Committee will give them a rougher time than their own Minister because he is preoccupied with other issues. That is intended to improve the Government machinery as well. In addition to that, one may find there are some areas where it is a team effort, where the Government will say "Go and do it in this way" and the Committee takes evidence and also has specialist advice. That has been particularly true on the forecasting and statistics where we have a statistical side which has broad responsibility for its deficiencies and many of the problems we are facing we are gradually getting Government statistics on on a better basis. It has been back and forth between the Government and the Committee. Similarly with the Next Steps, a radical change in the establishing of agencies rather than the monolithic control of the past, where the Treasury Committee has suggested changes here and improvements there so you have had, generally speaking, on the floor of the House an exchange of views which has improved the quality of Government generally.

185. I realise not everybody gets everything debated which they would like to have debated on the floor of the House, but by and large are you satisfied there is adequate debating on the floor of the House for these reports of these important department Select Committees one way or the other?

A. Yes. I would be quite happy to see perhaps a modest allocation of time, say three or four days a year even, where perhaps the Liaison Committee might select a broad range of debates for Select Committee reports. One runs into the usual problem of Government time. I hesitate to say that would make your Lordships sit at even more inconvenient times but it might be worthwhile.

Chairman] That is an interesting reply because a not dissimilar suggestion has been made by the chairman of one of our Select Committees.

Lord Thurlow

186. Could I follow one point in relation to that. One of the points we have made in relation to the debating of our Committee reports, is the tendency for it to be pretty incestuous because the debate is participated in by members of the Committee and not others. I take it the Committees in the House of Commons are so different you do not experience that problem?

A. It sometimes happens on Estimate Days although the last two have been very widely subscribed to. There is a danger of that happening because the House realises these people have been studying in great depth and they have something to say on the subject. My impression is it is getting less so because the operation of the Committees generally is becoming more acceptable. There are some of my senior colleagues who were in the House before this

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16 July 1991]

MR TERENCE HIGGINS, MP

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[Lord Thurlow *Contd*]

happened but it is now an accepted part of our arrangements. It is very important that membership of the Committee and participation in the debates should come from a mixture of relatively new Members gaining experience and some senior Members who add, if I may say, some weight to the Committee. I hope in the next Parliament as this thing becomes established as part of our tradition we will see this balance of new and old Members rather more than we have in the past and more senior Members taking an active part in the Committee structure.

*Chairman*

187. Mr Higgins, thank you very much indeed. Like your predecessor, Sir Peter, you have brought very great experience to our discussion here this afternoon. I personally, and I am sure I speak for my other colleagues on the Committee, have found the answers you have given to be of the greatest possible use and interest.

A. Thank you very much. I am grateful to you for inviting me.

Chairman] Thank you.

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TUESDAY 23 JULY 1991

Present:

Bancroft, L	Kearton, L
Boston of Faversham, L	Pym, L
Dormand of Easington, L	Thurlow, L
Jellicoe, E. (Chairman)	

### Memorandum by the Leader of the House

#### INTRODUCTION

1. I welcome this opportunity to give evidence to the Select Committee. I am mindful of doing so in a dual capacity: as Leader of the House, and on behalf of the Government as a whole. That dual role allows me both to give the Committee the Government's collective estimation of the work and value of Select Committees of the House, and to make some positive suggestions for possible developments for the future.

2. In the present brief paper I shall, first, make a general point about the membership of Select Committees in this House. Secondly I shall set out the Government's assessment of the work of the two existing Sessional Select Committees (the European Communities Committee and the Select Committee on Science and Technology). Thirdly, I shall consider whether any new Sessional Select Committees might be established. Fourthly I shall discuss the value of *ad hoc* Select Committees. Fifthly I shall consider the proposal for a Liaison Committee to co-ordinate the work Select Committees and monitor the use of staff resources. Finally, I shall address the problem of the debating of Select Committee Reports on the floor of the House.

3. I do not at this stage intend to give a view on the use of Select Committees in the legislative work of the House, since I note that the Clerk of the Parliaments undertook to write up specific proposals, and I would wish to comment on those when they are available.

#### *Membership of Select Committees*

4. There is one general point I would make, although I do so with some diffidence, conscious of my own recent arrival in the House. (Indeed, all my remarks are made in the light of that consciousness.) The House of Lords contains a wealth of wisdom and experience. That wisdom and experience is to an extent distanced from the cut and thrust of current political debate as it is conducted in the House of Commons. That is in many ways its strength. It is also potentially a weakness. My strong impression is that a significant proportion of those members of the House who are active on Committees take relatively little part in the rest of the life of the House. Conversely, debates on Select Committee reports sometimes seem only to attract those Lords who have been active on the Committee whose report is being debated. I see dangers in this divergence. Select Committees in the Lords must not become independent entities insulated from the wider political life of Parliament. If they do, they run the danger of becoming irrelevant.

5. The membership of Select Committees in the House of Commons changes periodically because of General Elections. This protects Select Committees in the Commons from becoming self-perpetuating, or isolated from the wider life of the House. I believe that we in this House must be very careful not to let our Select Committees become the preserve of enthusiasts—necessary and invaluable though the committed and knowledgeable are—because in that way they will become marginalised, and exert less influence than this House should in the affairs of this country.

6. I recognise that the House itself acknowledges this difficulty, and has the mechanism of the rotation rule as a corrective. I wonder however whether that corrective is as effective as it might be in encouraging members of the House to come on to Select Committees—and, indeed, to leave them. I hope that this is one of the matters which the present enquiry will examine.

#### *Role and Work of the European Communities Committee*

7. The Government attaches great importance to the scrutiny of European Communities legislation. The European Council in Rome last December agreed that "Consideration should be given to arrangements allowing national Parliaments to play their full role in the Community's development." Whilst not underestimating the real and growing significance of the European Parliament, the Government views the European Parliament and national Parliaments as complements, not competitors, in the process of enhancing democratic accountability within the Community. The Council, comprised of Ministers drawn from national Governments, is the principal law-making body of the Community. It is therefore important that those Ministers should be fully aware of the views and interests of national Parliaments.

23 July 1991]

[Continued]

8. The systems for national parliamentary scrutiny of draft EC law that we operate in our two Houses of Parliament are often cited as models from which other national Parliaments could learn. As part of the continuing debate on this subject, the United Kingdom has presented some ideas to the Inter Governmental Conference on political union which are aimed at increasing the involvement of all national Parliaments in the Community's activities. At the same time, the Government is keen to maintain and develop the effectiveness of the existing scrutiny arrangements in our own national Parliament, based on the different but complementary approaches adopted by the two Houses. The Government therefore welcomes the present enquiry as providing an opportunity for the House to review its procedures and ensure that the best means reasonably possible of achieving effective scrutiny is in place.

9. The Government believes that the European Communities Committee in recent years has made a good choice of issues on which to report, selecting those of greatest underlying significance rather than those which may be politically sensitive in the short term. Duplication with House of Commons Select Committees' enquiries has been avoided. Reports have in the past achieved a balance between analysing all the main points in sufficient depth and being concise enough to be readable, though they have perhaps lengthened in recent years. On the whole, it is reports which are reasonably short and published at an early stage that tend to be the most influential. European Communities Committee reports are indeed regarded as authoritative documents by opinion formers in the press, besides being read by Ministers and officials involved in policy making. They are usually, though perhaps not widely, read in Brussels, and occasionally by some other member states and major organisations. The Government therefore believes that in general the present system operates well.

10. Having said that, there are one or two caveats which I would enter. Granted the wide terms of reference of the Committee, there may sometimes be a danger that a report will become too much a critique of domestic policy in isolation from its European context. Clearly there may be areas where the Committee will wish to criticise the United Kingdom's stance on an issue, or our implementation of Community legislation. Nevertheless I believe—and this is more a warning than a criticism—that the unique contribution of the European Communities Committee is in producing reports which focus sharply on the most significant European issues. Too much wealth of detail, too great a range of review, or too narrow a concentration on the domestic shortcomings of the Government are—or would be—ineffective ways of bringing the House's undoubted weight to bear on European affairs.

11. The changes in the Community consequent on the Inter Governmental Conferences will no doubt be reflected in the work of the European Communities Committee, but I wonder whether there is really a case for making no changes at all in the structure of the Committee until after the IGCs. The structure now may be thought to be over-rigid and a reduction in the activity of standing subject-related Sub-Committees—perhaps a reduction in the numbers of such Sub-Committees—in order to release more of the time of the members and staff of the Select Committee to pursue specific *ad hoc* enquiries—might be considered. This would have the additional advantage of giving flexibility throughout the Committee system, in that those members and staff might be available for *ad hoc* Select Committee enquiries on other subjects when desired.

#### *Select Committee on Science and Technology*

12. What I have said in relation to the European Communities Committee applies to the Select Committee on Science and Technology. Its membership is distinguished, and its reports authoritative.

13. As the only Sessional Select Committee of the House which is devoted to domestic issues, the Select Committee however runs two related risks. It may at times overlap the work of one or other of the departmental Select Committees of the House of Commons; and it may range to the very edge of its terms of reference, if not over them. Indeed, the very breadth of the subject paradoxically encourages this. Again, the Government considers that sharply focused enquiries are most likely to be effective.

#### *Additional Sessional Select Committees*

14. Notwithstanding the success of the Select Committee on Science and Technology, it is hard to identify another area of domestic policy where a Sessional Select Committee in the Lords would not duplicate the work of a Commons Select Committee. There is of course no reason why the Houses should not work to some extent in parallel. Nevertheless, there are sensitivities here, as the pressure for a Commons Select Committee on Science and Technology has shown. On balance, therefore, there does not seem to be a strong case for an additional Sessional Select Committee.

#### *Ad Hoc Select Committees*

15. In recent years the two Sessional Select Committees have absorbed most of the energies which the House has devoted to Select Committee work. A number of members of the House have argued for more *ad hoc* Select Committees. The Government is not opposed to that in principle.



23 July 1991]

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16. It is obviously however, very important that subjects for *ad hoc* Select Committees should be chosen with care, in the light of the particular contribution the House can make. A House of Lords Select Committee can open up an area of policy, perhaps preparing the ground for legislation in future years. Conversely, there may be compelling reasons why a particular subject would not be suitable: for instance, if it was inextricably linked to wider political or policy considerations, or if Government policy is itself already well-developed, and in process of being implemented.

17. Beyond this, there is a point about which I believe the House itself is sensitive: that is, that the unelected Chamber must be doubly-careful to ensure that Select Committees are not perceived as representing special interest groups or lobbies. For all these reasons the principle of *ad hoc* Select Committees can be supported; as long as the subjects are chosen with care.

#### *Liaison Committee*

18. There is a need to establish priorities in Select Committee work. On at least one occasion recently it has proved impossible to staff an *ad hoc* Select Committee, essentially because of commitments in the Sessional Select Committees. It is clearly satisfactory neither to members of the House nor the staff themselves for that to be a reason why a Select Committee should not be established. On the other hand, as Leader of the House, and in support of the Clerk of the Parliaments, I have a duty to ensure that resources match needs: over-manning in order to staff putative *ad hoc* Select Committees is clearly undesirable, as would be maintaining too high level of work in the Sessional Select Committees simply because the staff and structure were available.

19. In fact, I understand that the staff of the House may at present be over-burdened. I have become conscious, in the short time I have been here, of the extreme reluctance of Clerks and other staff to plead pressure of work. That puts an obligation on the House to make a judgement as to what can reasonably be expected of the staff of the House. This extends not only to how many Committees can be staffed, but also to the level of activity of each Committee and Sub-Committee, both in terms of reports undertaken and meeting held. The Clerk of the Parliaments can advise: he cannot be asked to decide. As Leader of the House I would ask the present Committee to recommend a mechanism which will allow us, not only to set priorities for the work of Select Committees, but to monitor the demands made by Select Committees on the resources of the House.

20. The creation of a Liaison Committee has been proposed. Both as Leader of the House and on behalf of the Government, I strongly support this.

21. The Liaison Committee would be a means of achieving most, if not all, of what I have argued for above. Through recommendations to the House as a whole it could:

- (a) decide on subjects for *ad hoc* Select Committees;
- (b) allocate resources between different Select Committees, whether Sessional or *ad hoc*;
- (c) monitor the overall Select Committee work of the House, and assess any danger of overlap with the work of Commons Select Committees;
- (d) act, in conjunction with the Staff of the House Sub-Committee (or its successor), to ensure that each Committee was adequately staffed for the level of work which that Committee wished to undertake.

22. The composition of such a Liaison Committee will require careful consideration. The usual channels will need to be strongly represented, since this should be a means of guarding against a divergence between Select Committees and the rest of the life of the House. The two Sessional Select Committees should also be represented, perhaps through the *ex officio* membership of their Chairmen. Any *ad hoc* Select Committee might be represented in the same way. Finally, I would argue strongly for the inclusion—whether as full members or by invitation to attend—of those Government Ministers directly involved with Select Committee work (perhaps the Lords Minister in the Foreign and Commonwealth Office and the spokesman on Education and Science). This would be a means of keeping the Liaison Committee briefed on the wider political agenda of the Government, and of focusing the attention of Departments (through the need to brief Ministers) on the overall Select Committee programme of the House.

#### *The Debating of Select Committee Reports*

23. Finally, the work of Select Committees must find its way onto the floor of the House by means of a debate on the Reports produced. This has been touched on above, but I know that disquiet has been expressed in the House recently that Reports have not been debated quickly enough.

24. The Government has indeed been criticised for the timing of debates on the Reports of Select Committees. This needs some rebuttal. The Standing Orders of the House were changed two or three years ago to give Select Committee debates equal precedence with legislation. In practice debates are arranged whenever the Committee authorities ask for them. It is important to remember that in this House the Government arranges the Order Paper by agreement, and does not control it. Moreover, the present arrangements have the merit of a considerable degree of flexibility, and this benefits Committees. Sometimes

23 July 1991]

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it has been convenient for the Committee to postpone a debate—as it was with the Science and Technology Report on Priorities in Medical research—and when necessary an important debate has been held very quickly—as it was on the Report of the Select Committee on Murder and Life Imprisonment, and on the Report of the European Communities Committee on European Monetary and Political Union. On the whole I would suggest that the present arrangements work well.

25. It might be possible to allocate two or three Wednesdays a year to Select Committee Reports by agreement between the usual channels. This however needs caution. At present Wednesdays from about the middle of June are devoted to Government business. It would be most undesirable for the legislative life of the House if Wednesdays in June and July became unavailable for legislation. Moreover, giving specific Wednesdays to debates on Select Committee Reports might be inflexible: there might not be Reports of sufficient weight to be debated when a Wednesday was available, and the allocation of specific Wednesdays might equally act as a deterrent to other times being found for debates.

I recognise however that the debating of Select Committee Reports is likely to remain an issue. Again, priorities need to be set: in this case, between the legislative work of the House, general debates, and debates on Select Committee Reports. Monitoring of arrangements for the latter might therefore be an additional function of the Liaison Committee.

Waddington

July 1991

#### Examination of witness

THE RT HON LORD WADDINGTON, QC, a Member of the House, Lord Privy Seal and Leader of the House, examined.

#### Chairman

188. Lord Privy Seal, thank you very much for coming to be with us, especially at what is, we all know, a very busy time for you and a rather busy day too. I should also like to thank you on behalf of the Committee for the memorandum which you have sent us. I note from that you would not like at this moment to give us your views on the use of select committees dealing with the legislative work of the House until the Clerk of the Parliaments has at our request submitted further proposals on that; that seems to me absolutely right, but I hope it is not asking too much of you if after the summer holidays we might ask you to come back, when we have had the Clerk of the Parliaments' views, to discuss that aspect of the matter, not least since in response to Lord Northfield you enlarged our terms of reference to cover that particular issue. May I just add, Lord Privy Seal, by way of introduction that I was particularly struck by what you said in the introduction of your, if I might say so, extremely interesting memorandum about the danger as you foresaw it of a gulf opening up, a sort of dichotomy, between life on the floor of our House and the more rarefied Select Committee life of our Chamber. I was very interested to note what you said about the possible remedies there, a greater mix of membership perhaps, a faster rotation of crops and perhaps added to that more time and easier time for debating reports and so on. I personally would be very interested to hear what you would like to say by way of introduction on that and, of course, on any other matter as well.

(Lord Waddington) My Lord Chairman, may I thank the Committee very much for their courtesy in having invited me, and obviously I would be only too happy to return after the recess if the Committee would find it helpful for me to do so; certainly I think it would be to the convenience of the Committee for

me to wait until then to express any opinions on Committees on Bills. Can I apologise to the Committee for having left it so late before letting the Committee have my paper. It may be of interest to the Committee to know that one of the reasons for the delay was that I did go to some pains to organise a meeting with colleagues, so that when one reads in my paper expressions of view they are often actually the collective view of Government. However on the particular point you have raised, Lord Chairman, I am very conscious of the fact I am very much a new boy in this, but I think anybody coming to this place afresh would notice that the work of Select Committees does go on. You have a day for debates on Select Committee reports on the floor of the House, then you see those who have laboured hard to produce those reports also appearing and speaking in the debates on the reports (unfortunately sometimes others not taking part) but certainly people then taking part who do not necessarily feature in the daily work of the House. I think that impression I have got is an impression that others would also have got. That is linked, I suppose, to the question of rotation. Obviously if people are forever serving on these Select Committees and obviously doing good work—because there is no doubt whatsoever, and I think my paper draws this out, the work is highly esteemed both within Government and outside Government—but if they are doing this work year after year after year and there is not much rotation of membership, it is inevitable that they become rather a class on their own. I was rather surprised when I looked into the matter to discover that although there is supposed to be a rule about rotation, there are so many caveats and so many loopholes that in fact there seems to be the most limited rotation. The obvious example being the person who can serve for three years as a member of a Sub-Committee and then blossom as the Chairman of the Sub-Committee, and then that is six



23 July 1991]

THE RT HON LORD WADDINGTON, QC

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[Chairman *Contd*]

years instead of three years. Then there are the many examples where people have a sabbatical year, and then come back after the year and indeed often do not go away during the year because during the year they have been co-opted as a member of some Sub-Committee. So I think these are matters which no doubt will excite the interest of your Committee.

Chairman] Thank you very much, Lord Privy Seal. Expressing a personal preference, I would like to see more new Members of the House, be they life peers or younger hereditary peers coming in and getting involved in the Select Committee work of the House. How this can be done, I do not know, and whether we should be stiffening up the requirements for leaving a Committee and the period—one year or two years—thereafter, I am not quite certain in my mind at the present time. However I am personally rather sympathetic to the idea we could have rather more of a mix and avoid perhaps this apparent dichotomy between life on the floor of the House and life in Select Committees. This is something which we as a Committee will be addressing ourselves to. Would it be convenient, Lord Privy Seal, if we take your admirable paper by sections as it were, starting perhaps, if it is agreeable to the Committee, with what you say about the European Communities Committee and then going on to other matters, the Select Committee on Science and Technology and what else follows?

*Lord Kearton*

189. Before we move on, I was interested in the Lord Privy Seal's opening comments, as you were too, Chairman. It is fair to say that a number of people find the work on the floor of the House extremely frustrating because it has such a limited effect in getting things done. We had one witness who mentioned the ineffectiveness of replies by Government to some of the select committee reports. One must remember that the Government spokesmen in the House of Lords have no freedom of action, and I think the phrase which was used was "puppets on a string". If you do have that as a widespread feeling, you can get the situation where people think Committee work is much more satisfactory and fulfilling than the rather non-productive work on the floor of the House.

A. My Lord Chairman, I can understand the frustration raised by the noble lord, Lord Kearton, and actually I read that exchange. I also read the previous evidence given before this Committee—I cannot remember on which day—when the noble lord, Lord Beaverbrook expressed his opinions on the matter. Of course I suppose it is inevitable if you have a bicameral legislature and one house is not elected and the other is elected, and you have the one which is elected having the vast majority of ministers and the other which is non-elected only having a very, very few ministers in it, and those ministers who are there are very rarely the ministers who are actually making the decisions in the departments—which are those decisions discussed on the floor of the House. What more can they do except brief themselves as best they can and try to improve the draft statements

which are given to them by their civil servants to make them more literate and more interesting and hopefully perhaps sometimes even more amusing to their Lordships. It is very frustrating. However, I do not think, given the way in which we operate in this place and given the composition of the House of Lords, we are ever going to get away from that situation. What we can do of course is address the question of how soon Government should reply to select committee reports and the machinery for having time for debates on select committee reports and the time of the day when those select committee reports might be discussed, but all these come later in the paper. It is interesting, and again one learns this every day, you laboriously plan the progress of business in this place, and then you go for days and days and days and the House gets up at 6 or 7 o'clock in the evening. If one were to look at the hours we have sat over the last month or two, one could easily prove there is more than enough time to debate select committee reports, but you have to have careful planning and sometimes careful demand for time to deal with Bills, and not perhaps insist on too long a time when too long a time is not actually required. All these are matters which have to be planned.

*Lord Pym*

190. I think this divergence matter is extremely important. It seems to me that the nature of the work of these select committees is such that it can only be done really well, as it is done, by operating in the way they do operate. The bit which seems to me to be missing is making enough fuss of them on the floor. One of our witnesses said that one reason why other members tend not to take part in these debates is because the Select Committee has become expert in its subject, and everybody else feels rather amateur, and this is rather inevitable. I think if it was possible for the House to make much more of the debates of select committees, give more attention to them, and coupled with that Lord Kearton's excellent point that if there could in some cases be altogether improved ministerial replies, it would be enormously helpful. Now they are rather shoved off on the side, they are fitted in when it is convenient, "going through the usual channels" and all that, and although that has to go on to some extent, there ought to be three or four occasions in the year when one or two Select Committees can be discussed. I think with your help and other help more could be made of it, and I think that would help to end the divergence and bring Committees and the floor of the House closer together.

A. My Lord Chairman, again I have some considerable sympathy with the point made by Lord Pym. The remedy is to a large extent actually in the hands of the select committees. In this place the Government has not got a monopoly of business, there is no priority automatically given to Government business, if indeed a Select Committee Chairman can be persuasive and can persuade for instance the opposition to support his pleas that time should be found for a debate on a select committee report, he is going a long way towards getting the

23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Lord Pym *Contd*]

Government to agree to time spent on a select committee report.

191. But what I am saying is that Government ought to want to do that as part of its responsibility to the Committee.

A. I do not think there is any reluctance on the part of Government to provide time for Select Committee reports, although the Government would be reluctant if there was a very rigid timetable laid down for consideration of select committee reports. You would never get the Government agreeing to sacrifice a lot of time in June and July when you get the greatest rush on the Government's programme, but I think Select Committees would be pushing at an open door if they were to come to the Government and say, "Would you support us in having time for debates on select committee reports on working days?" Often you could debate short reports during the dinner hour; we often have nothing whatsoever to do during the dinner hour and the House would actually like to stop Government business for an hour or so. So I think there are opportunities for debates on select committee reports, and I would not like to give the impression that the Government is reluctant to have time. I think there has not been enough pushing by the select committees themselves, and not enough effort by all of us to see what opportunities can be found.

Chairman] I do not know what would you suit you, Lord Privy Seal, and the Committee; we could deal with this question of responses to select committee reports now, or we could turn back and follow more or less the chronological order of your paper. My instinct would be to follow the chronological order of your paper and then come back to this question of response.

*Lord Bancroft*

192. Before we leave that particular point, and following on from what Lord Kearton and Lord Pym have said, could I make a plea to the Lord Privy Seal for enthusiasm? I think there is a difference, and it is not just a semantic one, between enthusiasts and zealots. Unless you have enthusiasts engaged on select committee work, I do not think, as Lord Pym has implied, it would be anywhere near as good as it is now. So while I am all for more ventilation of our too incestuous Select Committee network, I think there should be enthusiasm but not zealotry.

A. I am sure the noble lord, Lord Bancroft has got a point. I suppose there is a danger the other way. Enthusiasts can sometimes be the same as the professionals, the experts, and the experts can shut out the non-experts. One can sometimes finish up, I suppose, with a European Communities Select Committee which is full of great enthusiastic Europeans. This is not my own view but I have had this view expressed to me by one or two people who are rather sceptical about Government policy on Europe and everybody's policy on Europe, and just do not like Europe very much, and they say, "Of course, the thing you have to bear in mind with the European Communities Select Committee is that everyone who is on it is a Euro-enthusiast." I do not

know whether that is right or wrong, but I think that might not be altogether too far from the truth, and there is just a risk that you get a very expert Committee but it is an expert Committee which tends to have almost one view. For instance, if you are dealing with the field of science and technology and there is a debate about the use of resources, everybody who has found his way on to the Select Committee on Science and Technology would obviously think that the priority as far as Government expenditure is concerned is more research, et cetera, et cetera. There is nothing wrong about that, but one has to be careful to bring in the amateur and the humble back bencher who wants to contribute to Select Committee work and might bring a breath of fresh air to the whole exercise, and say, "Wait a minute, perhaps there is another view on this".

*Lord Thurlow*

193. Might I make the point which has been mentioned in our previous evidence and discussions, that as some of the issues on which the European Sub-Committees report are pretty abstruse—for instance Sub Committee A has recently worked very hard and long on life insurance and its report is really a very expert kind of document and enough to make any ordinary lay Member of the House flinch. But we have had some references in our discussions to the possible value in making more use of popular summaries which might perhaps be circulated at the same time as the report and make it easier for Members in the Chamber to see that there is really something interesting hidden behind all this complicated expertise. I do not know if you think there is anything in that?

A. Lord Chairman, I think in reply to the noble lord, Lord Thurlow, I would certainly urge the attractiveness of shorter reports. Again I read some of the evidence given by the Clerk of the Parliaments and I thought it was most interesting when he brought out the fact that select committee reports have tended to get longer and longer and longer, and certainly the weight of the document does not always correspond to the value, and the longer the document I suppose the less likely anybody is going to look upon it as a popular version of anything. I thought it was really quite interesting: the average European Committee report last session was 94 paragraphs in length and 29 paragraphs in length in 1975-76; it may possibly be just a little less than that.

*Chairman*

194. Since we have turned to the European Communities Committee, could I come back to that, Lord Privy Seal. I note from what you said in paragraph 7 of your paper that the agreement of the European Council in Rome last December was that "consideration should be given to arrangements allowing national Parliaments to play their full role in the Community's development." Then, in the succeeding paragraph, you go on to say, "... the United Kingdom has presented some ideas to the Inter-Governmental Conference on political union



23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Chairman *Contd*]

which are aimed at increasing the involvement of all national Parliaments in the Community's activities." Without wishing to trespass too much on Inter Governmental matters, would the suggestions which have been made affect the present scrutiny arrangements which are in place in the Commons and Lords? Do you feel those scrutiny arrangements are satisfactory at present? In the light of possibly increasing national Parliaments' scrutiny, how would you like to see them evolve?

A. My Lord Chairman, I think we have held up to other countries our system of scrutiny as something which they could do well to emulate. I think that there is a considerable advantage in the House of Commons approaching this work in one way and the House of Lords approaching it in another way. What they do in the House of Commons, as I understand it, is merely sift through the documents and come to a speedy conclusion as to whether the document raises a matter of such interest that there ought to be some sort of debate on it. The Lords' Select Committee carries out a similar sift but then comes to a conclusion that a particular document is so important that it is worthy of careful enquiry, and a careful enquiry can therefore be carried out and a report published, and then later there can be a debate on that well-informed report if that is pushed. So I think those two ways of scrutiny are complementary. I do not think there is any overlap at all between the functions carried out by the Lords' Select Committee and the Commons' Select Committee, and it is very important, as I pointed out elsewhere in the paper, there should not be an overlap. Although I do hint somewhere in my paper that I cannot see it is necessary to wait for the end of the IGCs before necessarily having a change in the way in which the Lords' Select Committee works, there is nothing that I can put my finger on in the way in which the Lords' Select Committee works at present which I would criticise. I think the Government were absolutely right in Europe to say, "Look, we believe there ought to be a political declaration urging the importance of the input of national Parliaments", and here we have in our country a system of scrutiny—and there are about five other countries which have no system of scrutiny at all; at least five.

195. Could I just mention that we had some very interesting evidence, which I suspect you may have seen, Lord Privy Seal, from Sir Peter Emery and Terence Higgins last week, and I was very reassured—and I do not think all the members of the Committee who are present here now were there then—by the fact they feel there was no duplication in the European Communities field between the two Houses. It is something which needs careful watching, something which perhaps the Chairmen of the Commons' and the Lords' Select Committees, or if there was a Liaison Committee set up in the Lords, should watch. But, at the present time, there is no duplication and in fact the work of the two is very complementary, and that is also your opinion, is it not?

A. It is indeed, Lord Chairman.

*Lord Kearton*

196. I was privileged to be a member of the delegation from both Houses which went to Rome the week before the December Inter-Governmental Conference, the so-called "Grand Assize" of the national Parliaments and the European Parliament, and we were a very catholic bunch—for instance Bill Cash and Hugh Dykes—certainly not all pro-Europeans by any stretch of the imagination. As you said, no other legislature in the whole Community looks at the Common Market proposals in anything like the depth which is done in this country. We were astonished at the enormous ignorance on the part of many of the national Parliaments of what was coming from Brussels and they had practically no influence over their own Governments either in response to what was coming from Brussels.

A. I am sure Lord Kearton is entirely right. Perhaps some of them believe any scrutiny can be carried out by the European Parliament and they do not really address the question as to the extent to which national Parliaments and the European Parliament should complement each other.

*Lord Bancroft*

197. It is interesting that the Lord Privy Seal says, quite rightly, that the arrangements we have for scrutiny of the Community is really pretty good, certainly very good compared with many other countries, but he does suggest in paragraph 11 of his paper that there is room in his view for a reduction, either in the activities of some of the subject related Sub-Committees or perhaps a reduction in the number of Sub-Committees. I make myself bold enough to say I agree with that. I wondered whether of the two, a reduction in the activity or a reduction in the number of Sub-Committees, he has a preference?

A. My Lord Chairman, in reply to the noble lord, Lord Bancroft, what I was trying to do was explore how the whole system can be freed up. I think this is very closely concerned with the question of whether there has to be a Liaison Committee, but the one thing one would not want to see is a frame of mind in which people said, 'There are six Sub-Committees we must keep them all busying themselves away, we must make jolly sure each Sub-Committee gets its little share of the documents which we are sifting', and I would have thought there could be a temptation for that to happen. I have no evidence to suggest it is happening, but it seems to me somehow undesirable that you should just have a completely rigid system, that you should assume, regardless of the weight of the documents emanating from Brussels, regardless of how far they impact on our life here in Britain, there will always be six Sub-Committees busying themselves. That cannot be right. So if one has a Liaison Committee where all the wise people are putting their heads together and saying, "Look here, what are we going to do with the resources we have got? Have we got a good claim for more resources? What is the work which really needs doing?" That, I would have thought, would be a better way of doing things. It is very rash of me to say so but they have a Liaison Committee working in the

[Lord Bancroft *Contd*]

Commons which has to make difficult decisions like, 'Has the Select Committee put forward a strong enough case to go swanning around the world doing this, that and the other?' After a few little difficulties at the outset, the Liaison Committee seems to work very well.

*Lord Pym*

198. Do you not think it is the case that the amount of legislation emanating from Europe is bound to increase as integration and harmonisation increases? It does not seem conceivable it is going to get less. If it is going to increase, it seems unlikely there would be much scope for a significant reduction in the Sub-Committee system of the European Communities Committee if it is going to do its work well. We have taken evidence from them and they certainly do not look by any means at every document but they have a sifting process which we thought was pretty effective. Does it seem to you really likely we are going to be able to scrutinise what emanates from Europe adequately in the future and at the same time reduce our capability for doing so?

A. In reply to the noble lord, Lord Pym, the contrary view is that unless somebody like this Select Committee addresses this problem now, the likelihood is that with an increase in competence of the Community the temptation will be, "Right, there are these new areas of responsibility for the EEC, that means we have six Sub-Committees already, we had better have eight", and so it will go on and on. So, in a way, it is better to set up the machinery for freeing up the whole system now rather than wait for the end of the IGCs when it might well be that the noble lord, Lord Pym is right, and the House will be presented with a sort of *fait accompli* and it will be said, 'We have had to have six for this amount of work, now we definitely need eight.'

199. I am not saying that, but it seems to me that the workload will be increased so it will be a job to sift much more carefully. From what you said, I imagine you envisage if there was a Liaison Committee, the Liaison Committee would do that and not the European Communities Committee?

A. I think the noble lord, Lord Pym has got me aright. I can see some very difficult decisions having to be made if indeed there is a Liaison Committee, but it just does not seem right that each of the two Select Committees should just go on in their own sweet way with nobody ever actually looking in from the outside and saying, "Well, perhaps some things of even greater importance can be done." It is absolutely obvious if you are involved in the working of the European Communities Select Committee, you are bound to persuade yourself that you are doing a very good job, and having persuaded yourself you are doing a good job, you will look at the total burden of documents and say, "I think we ought to be entitled to more people to service us in all the terribly vital work we have done", but others sitting around the table in the Select Committee might think there are other priorities. You will never satisfy those who are engaged in this work that they have enough resources to do it.

200. Nobody has suggested in the European Communities Committee, as far as I know, they should have more resources; nobody has suggested they should be increased. The question is whether they should be diminished, and that is what we have to address.

A. My Lord Chairman, I would certainly not think I was capable of passing judgment on that, but I think somebody else ought to look at it, and ought to compare the work they are doing with the work which is being done by the Select Committee on Science and Technology, and then go on and examine the claims which were always being made to the Clerk of the Parliaments for more *ad hoc* Committees. The whole scene has to be looked at together.

*Lord Dormand of Easington*

201. Why does the Lord Privy Seal think that the Liaison Committee or any other Committee would be in a better position—because that is what he is arguing—to judge the volume of work than the Committees themselves? I can see the point that the Lord Privy Seal is making, that on the whole Committees would tend to be self-perpetuating, but why should these magic men and women who are to look at the whole workload of what the European Communities Committee is producing be in a better position to judge that than anybody else?

A. My Lord Chairman, I think it is just a question of looking back at the circumstances which gave birth to this Select Committee. One of the things which gave birth to this Select Committee was the Clerk of the Parliaments being approached by people who wanted *ad hoc* Committees on this, that or the other, and the Clerk of the Parliaments found himself in the invidious position of having to say, "Well, actually I cannot support your claim to have an *ad hoc* Committee on this or that because all the pressures are for more and more resources to service the two Select Committees we have got." So this Committee was set up to look at the whole of the Select Committee structure and decide whether indeed it is not time for an impartial eye to be cast over the whole structure. I do not know whether six Sub-Committees is too many or too few, I have not the slightest idea; I have not had the opportunity of weighing the rival merits of five Sub-Committees against six as compared with an *ad hoc* Committee on sustainable development. I do not know what three wise men would conclude, but they might conclude it was rather better to have just slightly fewer documents being the subject of the reports and an *ad hoc* Committee on sustainable development, but I think it is something that people ought to sit around a table and consider. I do not think it is right to throw the whole thing into the lap of the Clerk of the Parliaments and say, "Come on, you have to express a view on this", and I certainly do not like it being thrown into my lap because whatever I do I am quite sure it will be jolly unpopular!

*Chairman*

202. Could I ask if I am right in thinking from the evidence in your paper that Government



23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Chairman *Contd*]

Departments feel it would be most useful if on the whole the European Communities Committee (which I think we all acknowledge does extremely good work, perhaps unrivalled in any other national Parliament) were to concentrate for the most part on not too long reports, not too detailed reports, not reports bearing too much on our own domestic affairs, and reports above all which were timely, catching the bird upon the wing before it has gone too long into the Community machinery?

A. I think, with respect, my Lord Chairman, you have expressed the Government's view exactly, and I did go to great pains to get a Government view on this matter, and that is the Government's view, namely the view of ministers in the Foreign Office and the view of civil servants in the Foreign Office.

*Lord Boston of Faversham*

203. My Lord Chairman, the Lord Privy Seal mentions in his paper that on the whole the most influential reports are likely to be those ones which tend to be rather short and secondly those which are published at an early stage; a point which ties up with one thing you yourself mentioned, my Lord Chairman. I think reports being published at an early stage is a concept with which I would have considerable sympathy and it probably strikes chords throughout our Committee. It was put to us in his evidence by Lord Flowers that one of the difficulties is that it is hard often to predict sufficiently in advance when a particular subject is going to come up. For example, one does not necessarily know six months or twelve months ahead when a particular Bill is going to appear on the scene. I am wondering whether the Lord Privy Seal has in mind any suggestions to offer about how this procedure can be speeded up so more reports are produced at an early stage? Does the Lord Privy Seal, for instance, envisage some sort of mechanism being set up, some sort of early warning system, in which Government Departments themselves might be able to co-operate by giving some advance warning?

A. Lord Chairman, I really do not think I am very well qualified to express an opinion on that, but I certainly do remember when I was Chief Whip in another place, the then Chief Whip for the European Democratic Group in the European Parliament trying to persuade me that he could give us all in Parliament here far greater notice of things which were going on in the European Parliament. I am not sure actually that was right, but obviously machineries ought to be set up to give us the maximum notice of developments in the European Community, and perhaps that points to a rather different matter, and that is the extent to which one should improve relations between our Parliament and the European Parliament, and machinery for improving those links, and that may mean better linkage between our Select Committees and what goes on in the European Parliament, either on the floor or in Committees of the European Parliament. However, I do not honestly think it is a matter on which I am particularly qualified to judge. Really a witness from the Foreign Office would do better.

Chairman] We will, of course, be asking somebody from the Foreign Office to come to us.

*Lord Thurlow*

204. Lord Chairman, might I ask in the context of the slimline reports—and I think there is pretty general support for the idea and that shorter reports can be even better in general—are the Select Committees constrained by the convention that there is no recommendation generally put in the report unless it is supported by evidence given to the Committee? This in turn means that if a subject has to be covered in any depth, there has to be a pretty considerable breadth of evidence in order to support possible recommendations. Is there a real constraint here, or is this a matter which can be adjusted by Committees without any problem?

A. My understanding, my Lord Chairman, is that they do not have to publish the evidence, but obviously in most careful enquiries people would be interested to see the supporting evidence. The fact remains that even including the evidence these documents do seem to be generally speaking more bulky than they used to be.

*Lord Kearton*

205. That is only partly true, with great respect. Quite a number of the European Communities reports now are in the form of letters to ministers because they do not have a full enquiry. Quite important decisions were to be taken on the future of JET for instance, and one of the select committees considered this and a reply was drafted which should have been taken this afternoon to the Minister, but the evidence Government officials was taken off the record because we wanted to get a reply which was as helpful as possible to the Government in their conversations with Brussels. So while Lord Thurlow has mentioned the insurance report, there are a number of short, snappy documents which really get the business moving quite rapidly.

A. I am sure that is so, and we are certainly grateful for that work, I can assure you.

*Chairman*

206. I think we should turn from the European Communities Committee, but can I follow up the question which Lord Bancroft asked you when he was referring to what you say in paragraph 11 of your paper about the possibility that the activities of some of the Sub-Committees might conceivably be reduced, or that there could perhaps be some streamlining of them? I am expressing a personal point of view but I would have thought that if you set up a Sub-Committee, then it is very difficult (otiose almost) to limit its activity; it should be given its head. I do recall, on the other hand, when one is talking of structure, the evidence which Paul Hayter, the Reading Clerk, gave to us when he said in his view, and he has had a great deal of experience on the European Communities Committee, there was a case possibly for some restructuring of the Sub-Committees, and he instanced the possibility of

23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Chairman *Contd*]

bringing what is done in the environment and what is done in agriculture together—one of course impinges very much on the other. The view has also been expressed to me personally that there is a case for bringing transport into that because of its impact on the environment. I wonder if you have any off-the-cuff comments on that?

A. I honestly have not, my Lord Chairman. I have probably given far too many off-the-cuff comments already today! My main point is that I cannot see the argument against freeing up the system a bit. That is what I am saying. I am not in a position, and it would not be right for me to pretend that I am, to make a judgment as to how many Select Committees and Sub-Committees there were. I am sorry to impose on the Committee, but there was one point I ought to have made in reply to the point made by Lord Boston of Faversham. The Select Committee, knowing what is going on in Europe, perhaps knowing what are the most profitable areas in which to make enquiries, no doubt when this Select Committee comes to consider the composition of a Liaison Committee, if it comes to the conclusion that there ought to be a Liaison Committee, the big question does arise as to whether there should not be one or two Government Ministers on the Liaison Committee. If you had a Foreign Office Minister actually on the Liaison Committee identifying all the areas of work in the European Community field which were going to be of great significance, then one would know immediately which enquiries might actually prove extremely useful and extremely influential. So it has a bearing on the composition of the Liaison Committee.

*Lord Kearton*

207. If I may speak from experience, I was Chairman of a Committee some time ago which was requested by the Treasury to do a short enquiry into the proposals coming out of Brussels on VAT harmonisation and fiscal policy harmonisation. We tracked down, with the help of the Treasury, very comprehensively what was coming from Brussels at that time. Equally, we have had approaches in the past from Sir Geoffrey Howe and there have been hints that are jolly useful to certain topics. On an informal basis it has operated.

A. Thank you, Lord Kearton.

*Chairman*

208. I have only got one further question on the European Communities Committee, Lord Privy Seal, and that is to ask what your views are on the possibility of further co-operation between our Committee and those UK MEPs, be they in another place or be they members of the Lords, who are members of the relevant committee in the European Parliament? I do not know what you feel about this possibility.

A. I have discussed this with Baroness Serota as a result of being approached by one or two MEPs who want to see closer links with the European Parliament and want opportunities to take part in the work of the European Select Committee here. I would have thought it is for the European Select

Committee to work out its own procedures. I am not quite sure what in fact is permissible within the rules of this House anyhow. Some people go along at the invitation of the Select Committee and listen to the proceedings and some people go along and give evidence at the invitation of the Committee, but how far somebody who is not a Member of this place can actually be a member of a Select Committee I do not really know. Again, it is not really a matter for me, it is a matter for the Select Committee to work out how far they can improve their own performance by closer links to their colleagues in Europe. I am all for such closer links in every possible way. Access to Parliament and all the rest of it is very, very important. It is an area on which I have worked quite a lot in the last few years.

209. Could we turn to the other major general Select Committee, that of Science and Technology which, I think it is fair to state, also has a very high reputation in the outside world, and which you mention in paragraphs 11 and 12 of your paper. You say that, "Its membership is distinguished, and its reports authoritative". I should like to ask, if I may, quite what "authoritative" means in that context? How much impact do the reports of this very distinguished Select Committee, with its very experienced membership, have actually in Government?

A. My Lord Chairman, I am not quite sure that I can give examples, but innovation in manufacturing industry is an enquiry which followed the Aldington report on overseas trade. I remember reading that report when I first arrived here, and I do not think a report like that was entirely without influence on Government thinking.

210. We have discussed the structure of the European Communities Committee and, as you know, Lord Privy Seal—and I speak subject to correction from other members of the Committee, Lord Kearton, for example, has been a long-standing member of the Science and Technology Committee—I think I am right in saying that the Select Committee on Science and Technology has two Standing Sub-Committees at the present time. In the views which were expressed to us by its distinguished Chairman, Lord Flowers, one point which he made to us was that composition of that Committee in its scientific side reflects both the expertise of this House of the physical sciences and also its expertise in the biological sciences. It would be very difficult to hold the interest of that Committee if there was not at one and the same time enquiries going on which embraced both these two aspects. I think I am fairly stating Lord Flowers' views here. I wonder whether this is something you actually have any comment on, or whether you would feel there could be some reduction in the quantity of the Select Committee's work thereby enabling the establishment of some *ad hoc* Select Committees?

A. Again, my Lord Chairman, I think I am rather repeating myself. If you are a member of the Select Committee on Science and Technology, I am quite certain you are sure there are umpteen reports which



23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Chairman *Contd*]

could be of immense value to Parliament, and you are absolutely sure that two Sub-Committees are necessary. I am not quite sure that an outside observer would come to the conclusion that it was inevitable that throughout every year there are always two subjects where it is absolutely essential that an enquiry should be made into them. It does not make sense to me to assume that was always bound to be the case. That again is another argument for freeing up the system. You are bound to think there are enough areas to justify two Sub-Committees beavering away the whole time. I do not think somebody from outside would make that assumption.

211. Could we now turn to Select Committees on other matters. I note what you say in your paragraph 14 that, "On balance, therefore, there does not seem to be a strong case for an additional Sessional Select Committee." I should only like to add in that respect, insofar as the balance of opinion we have received in reply to our questionnaire is concerned, there has not been on the whole strong pressure for the establishment of another Standing Select Committee.

A. I was influenced, my Lord Chairman, to quite a considerable degree by the fact that we have avoided overlapping with what goes on in the Commons. I think it is extremely important that we should avoid that. Even this business of having a Science and Technology Select Committee here and there not being one in the Commons is a very sensitive area in Commons terms. That is why they exerted a great deal of pressure in order to get their Sub-Committee on the Select Committee on Education. I do not think it would be at all desirable here for us to set up a Select Committee on Education or a Select Committee on Transport or whatever it is, and to say that we are going into competition with what the House of Commons is doing. That does actually close off a number of the most obvious options. I think that is probably the principal reason why I do not think there is a strong case for having another Sessional Committee.

*Lord Dormand of Easington*

212. I think the Lord Privy Seal need not lose any sleep. We said that right from the very first meeting. May I make a couple of points? In paragraph 14 you say, "... it is hard to identify another area of domestic policy where a Sessional Select Committee in the Lords would not duplicate the work of a Commons Select Committee". He knows from his wide experience in both Houses now that the essential difference is that our structure is not vertical, in the sense that we have Select Committees covering the Departments, we have a horizontal structure, and we have two committees. As I said, I think in the last meeting of this Committee one of the big surprises when I came here, which was four years ago, not very long ago, was the fact there were only two. The European Community was pretty obvious I would have thought. That is absolutely essential. Science and Technology speaks for itself, because everybody praises the excellent work being done, and you have

done that yourself today. It does seem to me there might be room for one more. One of the distinguished members of the House of Lords who wrote to us suggested something along the lines of economic and social policy. It seems to me that is something which covers a number of the Government Departments on which the House of Lords could probably consider another Committee. Like the Lord Privy Seal, my Lord Chairman, can I say I am not in favour of a great proliferation, I think that would be pretty well disastrous if this House did that. That is the first point. The second point is, when we heard Sir Peter Emery he made a suggestion which I have not heard elsewhere; he said that some House of Commons Select Committees had too many subjects to investigate and, that being the case, he personally could see no reason why if one of the House of Commons Select Committees felt there was a second topic of equal urgency or importance which should be investigated, then, through some Committee, the Liaison Committee, personal reference or through yourself as Leader of the House of Lords, one of the Committees here could consider a second topic. I hope I am making myself clear on that alternative. It did seem to have some relevance. I wonder if the Lord Privy Seal could comment on both of those points?

A. My Lord Chairman, Lord Dormand has raised a very, very interesting topic. The truth of the matter surely is that science and technology embraces so many things that it is able to do almost anything it wants. The proof of the pudding is in the eating. Many people might be quite surprised as to the scope of its activities. Science and technology does cover a multitude of sins, and it does enable a very wide range of enquiries to be carried out. Look at economic and social affairs—the truth of the matter is if you set up a Select Committee on Economic and Social Affairs it could choose any subject on this earth almost. I can think of very few topics which would not come under the heading of economic and social affairs. What you would actually be setting up is a Sessional Select Committee which could choose to investigate whatever it wanted. It would surely be far better for the House as a whole or the Liaison Committee, or both, to come to a conclusion that there should be an *ad hoc* Committee to examine something which at that particular point of time is of very great interest in the House as a whole. I am not sure that it is a very good thing to farm this valuable privilege of investigating anything under the sun to another Sessional Select Committee.

213. I find that difficult to accept. Although the Lord Privy Seal has obviously looked at a list of the topics which have been investigated by the Science and Technology Committee, there are some parameters which would not include economic and social affairs. It is something of a disagreement I have with him.

A. The converse is certainly the case. I may have been exaggerating the extent of what can be done under the umbrella of science and technology, but I certainly was not exaggerating the extent of what can come under the umbrella of economic and social affairs, because I can think of nothing that does not

23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Lord Dormand of Easington *Contd*]

come under the umbrella of economic and social affairs, except possibly defence, and you would have a bit of a struggle to get that in.

214. Or agriculture?

A. That would come well within the remit of the Committee.

Chairman] Accepting, Lord Privy Seal, what I take to be your preference not for the establishment of a further Sessional Sub-Committee or Standing Sub-Committee but for an *ad hoc* Committee approach—

*Lord Dormand of Easington*

215. My Lord Chairman, I am sorry to interrupt but the Lord Privy Seal did not deal at all with my second point about Sir Peter Emery's suggestion that there might be a topic which one of the Commons Select Committees felt was of equal importance to another one, but it would not have time in the session to deal with it and, therefore, that could be farmed out to the House of Lords?

A. My Lord Chairman, I can see no objection to that at all. I think, again, one of the valuable things about having something like a Liaison Committee is that it could actually feed into the Liaison Committee from the House of Commons useful ideas for an enquiry, or from Government useful ideas for an enquiry. After all, one of the objects of the exercise is not to either castigate the Government or discover new inventions; it is to find out how Government thinking may be going so you can make your input and actually influence what the Government is going to do. It is extremely important to find out the thinking elsewhere, lest they have got a better feeling as to what are going to be the sensitive areas. It is very important that there should, where appropriate, be an input from Government itself. I certainly agree entirely with what Lord Dormand has said.

*Chairman*

216. I should just like to add, Lord Privy Seal, one thing that impressed me very much in the evidence we received from Sir Peter Emery and Mr Higgins a week ago was their feeling that there was a very strong case for the development of closer relations between the two Houses in this whole area—be it by formal or informal process of consultation, between the existing Commons Liaison Committee and any such Committee which might be established here, or by consultation between the chairmen of our Standing Select Committees and their opposite numbers in the Departments, or the European Committee of the Commons, or informal consultation of this kind. This was a theme which, I think it is true to say, ran very much through their comments to us last week.

A. I agree with all that, my Lord Chairman. The only thing I am not enthusiastic about is actually joint Lords and Commons Select Committees. Our experience of that has not been very good.

217. Could I ask one further question on *ad hoc* Select Committees. I think if you were to choose between establishing a further Standing Select

Committee or *ad hoc* Select Committees your preference would be for the latter. This is a rather mathematical question, I fear, but what would you feel should be the ability of this House in this area, to establish, say, one *ad hoc* Select Committee a year, or two every three years?

A. It is very difficult to say, my Lord Chairman, but certainly if there was one a year it would mark a very great increase in the average number of *ad hoc* Select Committees, and I think it would be an improvement if about one a year took place. I think if you have that sort of figure in mind I am sure the House could find something really interesting and really influential to do.

218. Lord Privy Seal, you have mentioned once or twice your feeling (and I hope I am not misquoting you) that it would be desirable if there was some mechanism established, a Liaison Committee, call it what you will. You have given in paragraphs 18–22 of your paper your views about that particular matter. I was particularly interested in what you had to say about the possible terms of reference of such a Committee in paragraph 21. Could I just ask you two questions about this, and the first is this: you have suggested four matters which might come within its purview; if it were decided to establish such a Committee might it not also be quite a good thing to bring within its terms of reference the whole question of monitoring the membership of the existing or future Select Committees in this House, and ensuring that there is a proper rotation of crops? From your point of view, would this be a sensible addition to its terms of reference?

A. My Lord Chairman, it certainly fits in with the views I expressed earlier.

219. The second thing I would like to ask is, where would you find the Chairman of that Committee coming from? Would it be some great neutral figure in our House? For example, a Lord Bancroft or a Lord Kearton?

A. My Lord Chairman, I think it would have to be some impartial figure. I do not know the House well enough but we have not failed in the past to find grand figures who have been able to do this sort of job.

*Lord Pym*

220. It seems in a way the word “liaison” is slightly unfortunate, because the nature of the committees in this House are very different from those in the Commons. In the Commons you have a dozen departmental committees, and the chairmen meet together in the Liaison Committee and they have all sorts of things they need to discuss together. They can approach the Government as a group, the Chairman can represent them and they can conduct their business in that way, but here we have only got our two Standing Select Committees, occasionally an *ad hoc* Committee, so it is quite a different kind of a concept. It seems to me that what you are suggesting here is some method of controlling the Select Committees in a way they never have been so far, including taking over from the two Standing Select



23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Lord Pym *Contd*]

Committees what they actually discuss, not leaving it to them. The European Communities Committee decides what they will discuss, and with the Science and Technology Committee, after very careful discussion amongst themselves, the implication here is that will be removed from them and taken over by this group. There are going to be problems, are there not, because the various parties will want to be represented. I quite agree the usual channels have to be heavily involved, and the chairmen of existing Lords' Committees must clearly be there. Would it not be necessary to have a number of other people as well if the Committee is going to adjudicate on a very, very crucial matter in a way that will be seen to be fair and will be acceptable to members of the House?

A. My Lord Chairman, I certainly did not envisage the Liaison Committee telling the Sessional Select Committees what they should do. I do not think that would go down at all well. I envisage, so far as the existing Sessional Select Committees are concerned, that they carry on as they are now but decisions might well be made by the Liaison Committee as to the number of Sub-Committees because of the need to service *ad hoc* Committees if that was the general wish of the Liaison Committee. No, I do not think for one moment you can lay down the law of what the Committee on Science and Technology wish to discuss. You could, by the presence of a Government Minister, suggest to the European Select Committee, "Look, there is something really important coming up and I can give you warning that this is going to be discussed next month in this forum or that forum. You might be interested in discussing it". It might say to the Committee on Science and Technology, "Actually you have picked a slightly difficult one there because we saw Terence Higgins last week and it has been the subject of a major enquiry by a Committee in the House of Commons", although that is very much less likely. You would have the opportunity of a useful suggestion. No, you would not dictate what the enquiry was.

221. That liaison exists now, does it not? The European Committee here is closely in touch with Foreign Office ministers and officials and, similarly, the Science and Technology Committee with the various departments. There is nothing new there; it would be the same as it is now, would it not?

A. My Lord Chairman, it is an added function. Obviously if you set up the machinery of the Liaison Committee principally to decide how the peer resources available should be used and how the financial resources should be used, you set up a Liaison Committee to decide whether the work of the European Select Committee should be expanded or contracted, whether you should have more *ad hoc* Committees or less *ad hoc* Committees, and you ought to take the advantage of formalising these very informal arrangements for providing an input to the Select Committees as to what is going on in Government lest they can recognise a really fruitful area for enquiry.

Lord Kearton] I would agree very strongly with Lord Pym, to call it a "Liaison Committee" is a misuse of words. You could call it a Resources

Committee, Management Committee, Priorities Committee, something of that kind.

*Lord Bancroft*

222. Could I make two points, one is going back to paragraph 16 on *ad hoc* Select Committees where, with very great respect, I must take issue with the Lord Privy Seal where he says at the end of paragraph 16 if the issue was inextricably linked to wider political or policy considerations it would not be a suitable subject. I am bound to say, with respect, that the most seminal reports from *ad hoc* committees have been pretty broad and sweeping, a sort of surrogate Royal Commission almost, and the very reason why we are sitting round this table today is that there has been the suggestion, as the Lord Privy Seal pointed out, for an enquiry into the economics of sustainable development. That is a very unfocused issue, and it is inextricably linked to wider policy consideration. I simply make that point because I do feel strongly about it.

A. If that is what the phrase means, my Lord Chairman, then the noble Lord Lord Bancroft is entirely right, but it is not actually what I meant by the phrase. What I really had in mind, the only example I can think of off hand now is that it might not be particularly profitable to have a rather narrow enquiry into an aspect of support for the disabled when the Government would come back and say that it is quite impossible to look at this in isolation, this has got to be looked at in terms of the whole Social Security budget. That is really what I was trying to reflect there. It may not have been very apt language to reflect it.

223. My second point was on the question of the Priorities Committee where, in paragraph 22 and orally, the Lord Privy Seal says, "Finally, I would argue strongly for the inclusion—whether as full members or by invitation to attend—of those Government Ministers directly involved with Select Committee work. . . ." Again I would attach very considerable importance to this, having been involved in the permanent machinery of Government for more years than it would be gallant to remember. The Government, in the shape of the permanent Civil Service, does have long, bony and intrusive fingers. I would very warmly support the notion of inviting Government Ministers to attend. I would strongly oppose them becoming full members. In the same way that the Audit Committee of a company quite clearly consists of people who have nothing to do with the management of the company, but members of the management of the company are invited to attend by invitation. I think it is terribly important to keep that.

A. My Lord Chairman, I put it in the alternative because I know that there is a different view of this, and I would be perfectly content actually if this Liaison Committee were to come to the conclusion that they wished to invite, from time to time, somebody from the Foreign Office to give them his wisdom, such as it was, on development in the European Community, and ditto somebody from the Department of Education and Science.

23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Lord Bancroft *Contd*]

Lord Dormand of Easington] May I say how much I agree with what Lord Bancroft said? I intended to say something similar. I would go a wee bit further and say invitations to Ministers would be pretty few and far between.

Lord Bancroft] I am not sure about that.

*Chairman*

224. Lord Privy Seal, I have failed to bowl a couple of balls at you. Can I bowl them now? The first I think is one which you will hit for six without the slightest difficulty. You will be aware of the difficulties which another place has had in establishing a departmental Select Committee on Scottish Affairs. It has been suggested possibly that this is a gap which this House should fill. I would very much like to know what your feeling is on that? That is the easy ball!

A. I hope it is easy, my Lord Chairman. There may be a catch in it somewhere. It certainly would be very odd to do so so late in this Parliament and we do not know what the situation is going to be after the next General Election. Quite clearly, it would be the intention to set up a Scottish Select Committee, because it was only the special circumstances of this Parliament that no Scottish Select Committee was set up. It is a very hypothetical question. One cannot foresee what the situation in Scotland will be but, hopefully, a Scottish Select Committee will be set up and the House of Commons is the place for a Scottish Select Committee.

225. Thank you very much. The other and I find more difficult question relates to the authority which has now been given to the Commons Home Affairs Committee to consider the Lord Chancellor's Department and the Attorney General's Office, both areas in which this House could have considerable judicial experience and knowledge to bring to bear. I do not know whether you have any views on this and whether there could or should be a role for this House in that context?

A. My Lord Chairman, this is an example of a House of Commons Select Committee, the Home Affairs Committee, having extended its authority, or having persuaded others that its authority should be extended and the job has been done. Now the activities of the Attorney General and the Lord Chancellor are within the remit of the Home Affairs Committee. Nothing is going to be done to reverse that. I do not, therefore, see how it could be very easy for any Select Committee of this place to have a role. You would be back in exactly the same territory of overlapping, and all these sensitivities, and I do not think one could really and convincingly make out an argument that the Lord Chancellor is here and therefore we have a special place in all this, because the argument tends to go in exactly the other way. All the talk about how strange our system is, and that really one ought to be moving towards a Ministry of Justice and the anomaly of the Lord Chancellor being in this place, it is the worst possible time for thinking that the administration of justice should not be considered central to the work of the House of Commons Select Committees, and should be farmed

out to the House of Lords, presumably on the pretext that the Lord Chancellor is here and therefore it ought to be our territory. It does not seem to me to be a good argument at all.

*Lord Pym*

226. On a different point if I may go back to the *ad hoc* Select Committees for a moment, which the Government is not opposed to in principle, I do not think you are very enthusiastic about it, although you said just now you thought that one per session might be helpful. Do you think if there was an *ad hoc* Select Committee considering either one major subject per session or two, or perhaps even three, with its membership adjusted according to the subject, it would not provide a good balance for the Committees of the House—the European Committee, the Science and Technology Committee? Would that not be quite a good balance for this House to go for in your view?

A. My Lord Chairman, I am not quite sure how different that would really be from what I would propose, except that you might run into difficulties of less flexibility. I am not sure how you would keep on changing the composition. It is really rather better to say an *ad hoc* Committee is an *ad hoc* Committee, and you pick horses for courses and you select people to carry out that particular enquiry. Does it really help if you have got a vision, one big enquiry a year; it is better to do the thing genuinely on an *ad hoc* basis.

227. Would it not be flexible to be able to say, "We will not do a big one this year. We will look at two or three lesser matters"? Would that be sensible or not in your view?

A. It is not what I envisage, my Lord Chairman. I can see the arguments in favour of it, but it does rather assume that there is always going to be something really worthwhile to do. The virtue of *ad hoc* Committees in this place has been that when they are alighted upon they are big subjects which excite the interest of the House as a whole. I have been fairly discomfited recently as a result of the activities of the *ad hoc* Committee on murder and life imprisonment. Nobody could doubt that was a very important and very influential Committee which excited the interest of the whole of the House when its proposals were before the House by means of amendments to the Criminal Justice Bill. I am not very keen on the idea of assuming for every month in the year there will be something useful for a Committee to do. I think it is far better to look for a really big subject.

*Lord Boston of Faversham*

228. My Lord Chairman, could I just raise a point on *ad hoc* Committees as well. The Lord Privy Seal says in paragraph 17 of his paper, "... that the unelected Chamber must be doubly-careful to ensure that Select Committees are not perceived as representing special interest groups or lobbies." I am sure that we would all very strongly support that principle. I am wondering whether, in putting that in, the Lord Privy Seal felt there had been any evidence



23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Lord Boston of Faversham *Contd*]

of that so far, or whether in fact the Lord Privy Seal was making that point in a general way as a point of principle to make sure that it was safeguarded in the way I am sure we would all want it to be protected?

A. Those words sometimes have a sort of pejorative flavour about them, but they are not actually meant that way. You might, for instance, on the Agriculture Sub-Committee of the European Committee finish up with nobody except great farming enthusiasts, and I think the odd generalist might be rather a good addition to that Sub-Committee. You might finish up with the Science and Technology Select Committee investigating some particular subject which might be something to do with the universities. One thing you do find about the Science and Technology Committee is that a very, very large number of people have either been or are connected with Vice Chancellors of Universities. It is probably rather a good thing now and again to get one or two people in so it does not look like a university monopoly which is running it. That is the sort of thing I meant. There is nothing sinister about it. I am not saying they have all decided to accept £50 from some organisation which wants to sell a new product.

229. I am very grateful, my Lord Chairman, that was precisely the answer which I expected to get. People outside, reading that sort of comment, might wonder about it, and I think it is best to have it swept away in that way.

A. I am obliged.

230. Could I just make one further point on *ad hoc* Committees and what the Lord Privy Seal just said? Lord Pym has described the approach of the Lord Privy Seal (if I am not paraphrasing him inaccurately) as not enthusiastic about *ad hoc* Committees. On reading the Lord Privy Seal's paper I took a somewhat different view. I felt if the Lord Privy Seal could not be described as being wildly enthusiastic about them, he was in fact supportive of the idea within certain confines which he has been at pains to set down, both in the paper and in the observations he has been good enough to make to us this afternoon. I wonder whether the Lord Privy Seal might wish to say a further word about his approach to the possibility of *ad hoc* Committees and whether, in fact, he does feel that they can be reasonably strongly supported provided, so far as he is concerned, that they operate within the sort of limits that he would like them to operate within if they were to be set up?

A. My Lord Chairman, all Select Committees can be embarrassing to the Government of the day, and no doubt the better the Select Committee the more likely they will carry out a searching enquiry which can be embarrassing to the Government of the day. I recognise that full well. Putting my Government Minister hat on, in a way I am making a rod for my own back if I advocate any more *ad hoc* Committees, because they are likely to come out with reports urging the Government to do something which the Government may not particularly want to do. The reality of the matter is that people want to have enquiries in this place. They want to have detailed

enquiries into particular subjects. People during my few months here have come along and tried to enlist my support for all sorts of interesting *ad hoc* Select Committees on this, that and the other. I am really facing up to the fact that there is a demand for *ad hoc* Select Committees; there is a demand for one every now and then anyway, just as there is a demand for an *ad hoc* Committee on sustainable development now, and I think we have to recognise that demand. If that is what the House wants, I am not going to shed any tears about it. I think they can produce very good work, as we all know from recent experience.

*Lord Dormand of Easington*

231. Could I take you up on that point relating to something which I have been mulling over since you said it, when I was making the point about the possibility (and I was not recommending it) of another broad band. I think I mentioned economics and social affairs. The Lord Privy Seal in answering that particular point (and I think I use his words) said the Science and Technology Committee can consider anything under the sun. If that is the case, my Lord Chairman, there must be something wrong if a Committee called Science and Technology can consider anything under the sun. I am trying to help the Lord Privy Seal, not that he needs any help, but what we can say is, "We can have any *ad hoc* study/investigation under science and technology". If I interpret it correctly, that is what he is saying. I am fairly sure, being fairly new to this place, that when the Science and Technology Committee was set up the members at that time felt pretty sure that whatever was being investigated was related in some way to science and technology. If I was to put the question now on the basis of that to the Lord Privy Seal, would he think it is time to re-name the Science and Technology Sub-Committee, or would it be better if we paid proper and due regard to *ad hoc* investigations?

A. I am not quite sure, and I stand to be corrected, but I have a feeling I talked about "anything under the sun" when I referred to the proposed Economic and Social Affairs Committee. I certainly did say that science and technology covered a multitude of sins. I will not say more than that!

*Chairman*

232. Lord Privy Seal, I do not know if members of the Committee want to put any more questions on *ad hoc* Committees, or the question of the proposed or possible Liaison or Priorities Committee, which I think is an important matter which we will need fully to discuss in our report. If not, could I put a question in a very pedestrian area on staff resources. I do not wish to pre-judge what our report is going to say as to whether we will envisage a call on more resources, or whether, if *ad hoc* Committees are going to be established, that can be done by various forms of streamlining elsewhere. It would be quite wrong to try to pre-judge this. In the event, if we did feel that there was a clear case for a modest increase in resources on the clerks' side, could I ask what sort of reaction that would have? In that context you will

23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued]

[Chairman *Contd*]

have noted, Lord Privy Seal, that the European Communities Committee have asked for one further full Clerk, and the Select Committee on Science and Technology have made a more modest request for a further temporary assistant. There have been those two specific requests already. Again, I would not wish to pre-judge our attitude towards that.

A. Obviously I would try to be sympathetic but there are factors to be considered other than just the question of affordability. I have not had a great deal of opportunity to study this, but clerks are highly qualified people and the pool of people to do this sort of work is not enormous. I am told by the Clerk of the Parliaments that the existing clerks work inordinately hard and he feels there is a limit on how much work can be put on their shoulders. There is also the question of peer power, and it is no use recruiting more and more clerks even if there is the money to do so if they are not actually going to be doing useful work as a result of willing hands with ability manning Committees. So all the things are inextricably linked, but I certainly would not like to give the impression I am here to say there is no money and you cannot do it. My instinct is entirely the other way, that if a very good case is made out by this House and they want to do something, we have to find a way through to enable them to do it.

233. I think we have talked about the response of Government to reports, but I have one further point. There has been a recommendation from the European Communities Committee to us that they should get a written reply to their reports from the Government within a month, and we in fact discussed this during their evidence, and I would very much like to know what your feeling is, Lord Privy Seal, about that. Do you feel it is reasonable they should have a written reply? If so, is that one month stipulation which they have made a reasonable one in your judgment?

A. My Lord Chairman, I am rather inclined to think it is too rigid. On some occasions it might provoke a very brisk reply which is not as good as that which would be obtained if more time was spent. I do not think you can really lay down very rigid rules in this area, and you have simply to try and galvanise Government into paying due respect to the efforts of the Committees concerned. I suppose you could argue that it would impose a discipline on the officials, but there is a risk, as I say, of them saying, "We have to meet this deadline, we therefore cannot spend as long considering this matter as we might otherwise have done." I think it could be counter-productive.

*Lord Thurlow*

234. Could I ask whether there might be a via media between actually having an agreed rule and the target, that this House would express the hope that Department Ministers would in general be able to reply within a comparatively short period of this kind without seeking to tie them down? Could one get the best of both worlds in this kind of way?

A. I certainly would not be at all worried if that sort of formula was arrived at by this Select Committee.

*Lord Dormand of Easington*

235. It is absolutely crucial to have a written reply before a debate takes place. That view has been expressed in this Committee before. When I was in the Commons I was a member of the old Select Committee on Nationalised Industry which the Lord Privy Seal may remember, an excellent Committee. I do not think my memory is playing tricks when I say we always had a written reply, something along the lines of what has just been said by Lord Thurlow, which certainly was not within a month (I think a month would be too constrained), but certainly within four or five months. It seems to me that might be a reasonable time in which to get a reply. My main point is, unless we would get that kind of reply, and in that time it would be a fairly studied reply I would have thought, then the whole quality of debate is different. It is absolutely essential that that be done. The Lord Privy Seal has not mentioned that, but I wonder if he could comment on that?

A. My Lord Chairman, perhaps it is something to which we could come back in the autumn. I would rather like to take a little more advice from the Ministers directly concerned. I do not want to say anything which could be counterproductive; on the other hand, I can see the argument, that you want some disciplines imposed, or targets or guidelines, so that you get the best possible performance. I will make some enquiries, if I may.

Chairman] Thank you. In that context could I just mention, the request for the quick written reply has been put to us by the European Communities Committee. I think it is fair to say, and I stand subject to correction by Lord Kearton, that the Select Committee on Science and Technology have often been quite happy for a reply to be deferred, as was the case with their important study of priorities in medical research. My own feeling, if I could express it, is that I would like to align myself with Lord Dormand and say, at least as far as the European Communities Committee is concerned, it is important for them to receive a reply as soon as is reasonably possible. That would be my own view on that particular matter. I do not know whether members of the Committee want to add anything?

*Lord Kearton*

236. I think you did say, my Lord Chairman, after we had discussed paragraphs 4, 5 and 6, membership of Select Committees, we might come back to that after the general discussion. I thought the reservations which the Lord Privy Seal made in these paragraphs were very important indeed. He used the phrase, "... they run the danger of becoming irrelevant", that "they become marginalised" and "exert less influence in the House". My impression is that members of these various Select Committees take their work extremely seriously and work hard, and their chief motivation is to be helpful to the affairs of the country. I think we ought to probe more



23 July 1991]

THE RT HON LORD WADDINGTON, QC

[Continued

[Lord Kearton *Contd*]

deeply into the Government's attitude as to how the work of Select Committees can be made more relevant to Government and to the affairs of the country?

A. Is the noble Lord referring to the little part in the rest of the life of the House? I am really talking there about the question of rotation. I am not saying that the reports are not good, in fact I went out of my way to say the reports were good. These are expert bodies which are producing expert reports, and I thought I had made it absolutely plain that the Government sets a great deal of store by them. The point I am making in paragraph 4 is the isolation from the rest of the life of the House, which is a different point entirely, and the advantages of having some rotations so that new people in the House, or younger people in the House, could get on to Select Committees.

237. I think everyone would accept that, but I think it is equally important for what you might call the confidence of the Select Committees that they feel the Government should take them seriously.

A. I do hope it is recognised there is nothing whatsoever in what I am saying there which suggests that we do not appreciate the work done by both the Science and Technology Committee and the European Communities Committee.

*Chairman*

238. Thank you, that is very helpful. If no other member of the Committee has any further questions to put to you, Lord Privy Seal, I should like both personally and on behalf of the Committee to thank you very much indeed for all the time you have given us towards the beginning of the end of what is naturally a very busy week for you. I think in paragraph 4 of your paper, which I think has also been extremely helpful, you say with undue diffidence about your being a comparatively new boy in this House. If I may say so, you have no reason for that diffidence, judging by the replies you have given us this afternoon.

A. My Lord Chairman, I have done a lot of swotting up! I am very grateful to you for the way you have received me.

TUESDAY 15 OCTOBER 1991

Present:

Boston of Faversham, L	Pym, L
Dormand of Easington, L	Thurlow, L
Jellicoe, E (Chairman)	Tordoff, L
Kearton, L	
	Greenhill of Harrow, L

### Examination of witnesses

MR TRISTAN GAREL-JONES, a Member of the House of Commons, Minister of State, Foreign and Commonwealth Office, and MR M ARTHUR, Foreign and Commonwealth Office, called in and examined.

*Chairman*

239. Minister, thank you very much for coming along. I know you are busy and therefore we are all the more obliged to you. As well as thanking you for coming here, I would also like to thank you for the help you have given, not least this year, to the European Communities Committee. That is very much appreciated. I would like to ask whether you have any general observations to make about the role and work of the European Committee in the Lords. From all the evidence which I have seen it is very highly regarded but we always welcome constructive criticism.

(*Mr Garel-Jones*) Thank you very much indeed, Chairman. Can I say how grateful I am to have been asked because, you are quite right, the EC Committee here is one with which my Department works very closely and whose work, deliberations and, indeed, reports are followed with great care by the Foreign Office. Indeed, we find them to be very useful contributions to the debate. So I am very pleased to have the opportunity to take part in this review that your Select Committee is making of committee work in the House of Lords. As I say, the Foreign Office has been involved, along with a whole range of government departments, in the preparation of the earlier evidence to this Committee and, in particular we were of course consulted about the written evidence that was submitted by the Lord Privy Seal, I think in July. I have also seen a transcript of the Lord Privy Seal's oral evidence given to this Committee and I know that, while the paper he submitted represented the collective view of the Government, he nevertheless felt able during the course of his evidence to adopt a more informal exploratory approach of his own. I hope it might be helpful to the Committee if I were to follow his example, with the caveat that I speak partly as a Foreign Office Minister and partly, of course, from my own experience of parliamentary procedures in general. I hope that might be helpful to the Committee.

240. It would indeed be very helpful.

(*Mr Garel-Jones*) Chairman, my own experience of the committee work of the House is confined for the most part to the work of the Scrutiny Committee and, since I understand that the scrutiny function occupies about 75 percent of the House's committee

work in total, it is probably sensible if I begin by giving my general views on the efficiency of and effectiveness of that scrutiny process. It is quite rare, as you know, Chairman, for the Foreign Office actually to be the lead department concerned in issues which the Scrutiny Committee reports on. It is rare for us to be in the lead except, of course, where those issues touch on relations with other countries. For example, the EFTA countries: in that instance the report your Committee made on EFTA last year was one of great interest to the Foreign Office and that is an area where we would lead. The principal exception to that rule, which I think is of some importance and relevance today, is the current negotiation on political union, on which we do indeed lead, and the associated institutional questions that may arise from that. There have already been quite a number of very useful reports on these in recent years. Can I just mention ones we have found particularly useful in the past years? The Report in 1986 on Delegated Powers of the Commission; the Report on the Delors Committee that on Staffing of EC Institutions in 1988; the EMU and PU Report in October 1990, and more recently the Law Making Powers and Procedures Report, which appeared in August of this year. Taken separately or together, these reports represent in our view a very significant contribution to the debate and to people's collective wisdom on these matters. All of those, rather than scrutinising a specific and narrow field, dealt with large and broad issues. Our judgement of them was that they were very well researched, very thoughtful, and provided a valuable input into thinking in these areas, not least, I think (and it is perhaps one of the advantages of your Lordships' House) in that they eschewed the temptation to concentrate on things like the "F" word and loss of sovereignty and so on, but actually focused in a much more serious way on the fundamentals of these particular issues. The Committee's report and the comprehensive evidence that was printed alongside it demonstrate, at least to us, that it is possible to approach these issues in a constructive way and to provide an analysis of the consequences of granting further legislative powers to the European Parliament which is both sober and necessary, particularly at this stage of the negotiations. We felt that your Report there was a very useful contribution to that debate. That is just



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Chairman *Contd*]

one of the most recent examples that comes to mind. Other reports have also been very valuable to us and have prompted us to pass those reports on to people who take an interest in these matters within the Community. For example, the report that was produced on staffing of EC institutions seemed to us to be a very substantial piece of work. As I say, it helped to focus the debate not only in Whitehall but in Brussels and the Community at large. Other reports in which we have taken a substantial interest, which have taken on an even greater significance in light of the proposals that now lie before the IGC, are those on voting rights in local elections—as you know this is one of the proposals before us in the Inter-Governmental Conference, free movement and right of entry post-1990, and border control of people, produced I think in 1989. All these reports it seemed to us were particularly timely and necessary reports and the last-mentioned one in particular gained wide circulation inside the Community itself and I think helped to focus debate there. So all of these reports, and a number of others I have not referred to, are I think read by a growing number of specialists in this field not just in this country but in the Community at large. The earlier report on delegated powers of the Commission, for example, produced in the context of the Single European Act negotiations, that report we think remains particularly relevant today, as one of the things we are discussing in the Inter-Governmental Conference is an increased role for the European Parliament. I think many who are considering these matters could, with profit, look back to that report. My Lord Chairman I see the Lords' reports on these matters as a useful adjunct to the more general procedures and, indeed, particularly scrutiny procedures that go on in the House of Commons. It seems to us that they represent a considered and thoughtful response, delivered sometimes after very extensive research by the Committee which has now built up a substantial reservoir of expertise, and a substantial reputation I think for objectivity with those who take an interest in these matters. As you know, my Lord Chairman, the Government greatly values the whole process of parliamentary scrutiny and, indeed, in our view (this is one of the things which we may come back to later on) the whole question of parliamentary scrutiny in national parliaments is one which we think should be encouraged throughout the Community, and that we think would bring considerable benefits to the legislative process in Europe and to the Community at large. This is the reason why we have proposed in the Inter-Governmental Conference that there should be a declaration attached to whatever Treaty emerges that would enable national parliaments to take the sort of interest in this process which is taken certainly by our Parliament and by the Danish Parliament but not perhaps by some of our partner countries. In that connection I would just add that the succession of quite impressive reports compiled by the Committee actually reinforces our case for involving national parliaments more in the life of the Community in general; because I think these reports demonstrate what national parliaments are capable of and what they can contribute to the process. You

may wish to ask me questions about this later. We have also proposed the declaration which seeks to involve national parliaments in the daily working life of the Community. The ideas that we put forward in the Inter-Governmental Conference in these two areas have won quite widespread support, and I am confident that we will obtain such declarations, and it will then be up to Westminster itself, perhaps with other parliaments, to come forward with ways of putting flesh upon them. Can I end my rather lengthy general remarks, (and I apologise, my Lord Chairman), by saying that the British Government's proposals in this particular field have, I think, been reinforced by, first of all, the kind of detailed scrutiny work that goes on in the House of Commons, and the sort of long range rather detailed and well researched reports that have been put out by the Committee here which, as I say, are well read and influential both in Whitehall and in the Community at large.

Chairman] You have no need to apologise, Minister, for having taken not a great deal of time. I think we are all very grateful to you for those remarks. I should perhaps mention at this stage that we have present a former Permanent Secretary of the Foreign Office, Lord Greenhill who is not a member of the Committee but has joined our discussions; and, as a member, we have a former distinguished Foreign Secretary present who must leave fairly soon. He has one or two questions, which he would like to put to you. There is also this more general question. We are looking at the whole Select Committee structure of this House, and on the whole the great weight of evidence which we have received, both from your colleagues in the Commons and indeed from Peers here, has been very much against duplicating the departmental Committee structure in the other place. However, there has recently been put to us a paper proposing that, given the experience and expertise there is in this House, we should have a Select Committee on Foreign Affairs.

Lord Pym] Yes, I would certainly like to come to the question of scrutiny by national parliaments, but there is this general question—it has been put to you—that of all the assemblies in the European Community, the House of Lords is the only one where there is not a committee on foreign affairs. The thought has been put to us that many people regard the reports of our European Communities Committee as exceptionally valuable; would there not be something to be said for a Committee which can look at the whole range of foreign affairs? We would very much like to know whether you have thought about that suggestion, and whether you have any view about its value both from your point of view, and indeed from the country's point of view. Or do you think that the subject is covered adequately by the Commons and that there is no need for the House of Lords to venture into that further wider field?

*Lord Tordoff*

241. Can we just pick up the point that we were discussing earlier. It has been suggested that people take no notice of the debates that take place in their



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Tordoff Contd]

Lordships' House on foreign affairs, whereas they do take notice of committee reports, which leads to the temptation of saying that we ought to have, even if there is no other reason (and I am sure there are reasons), a Foreign Affairs Committee because people will take rather more notice of what has been said?

(*Mr Garel-Jones*) Thank you. I think I would make a general observation first, which is that your Lordships' House seems to me to be such a unique institution that comparisons with practices that might take place in other legislatures are probably not very valid. Certainly I have considered this question because I have noticed that the Lord Privy Seal, in written evidence to you, has already discussed it. I agree with him that it is certainly desirable to avoid any duplication of effort as between this House and our House. I think that the House of Commons Select Committee on Foreign Affairs, as you know, is both extremely active and is itself rather distinguished, at least by our own modest standards down there. I think, clearly, there would be some risk of duplication of effort. There is no doubt about that. Equally, I am advised that there is no previous parallel for a duplication of select committees of this kind as between our two Houses, although I do not think that in itself would be an argument sufficient to exclude the possibility. I think on the whole, and I hasten to say in the end this is a decision that this House here will take, I would be nervous about duplication of effort. I do not know whether the procedures of this House would allow for that, whether it would be possible on an *ad hoc* basis to pick up individual issues and make reports upon them. Certainly I would not doubt, as I said earlier on, that the reports produced by this House, particularly the general ones that address large and complex subjects (and I am thinking, for example, that in the coming year the Community really must address the question of enlargement, not focused on any single applicant but the question of enlargement as a whole, and I have no doubt there are people in this House who would have substantial and interesting contributions to make to that) that such report would be widely read, not just by the Foreign Office but throughout the Community. I think Lord Tordoff is right, that reports produced by this House do have a select but not unimportant audience in Whitehall and in the wider Community. Whether it would be possible on an *ad hoc* basis to make reports on individual matters affecting foreign affairs I do not know, but I think I would be anxious about duplication with the other House.

Chairman

242. Just intervening briefly, Minister, it would of course be quite possible for us to establish an *ad hoc* select committee to look at an aspect of foreign affairs, be it the enlargement of the Community or whatever, and indeed it would also be possible, of course, for the European Communities Committee to establish an *ad hoc* sub-committee to look at some special aspect, and this would be one. Both those would be perfectly possible, given the necessary peer and clerk resources.

(*Mr Garel-Jones*) I think what one would be anxious about would be not to undermine in any way the, I think, rather happy complementarity that is built up, in European affairs at any rate, where our House tends to scrutinise the more detailed aspects of European directives as they come through and this House tends to take a rather wider overview of issues. I think that complementarity between the two is probably helpful to both Houses and I think the danger of, as it were, an element of competition as to who focuses on what activities might—

Lord Kearton

243. You did give a cautious welcome to the idea of an *ad hoc* committee on general questions of foreign affairs.

(*Mr Garel-Jones*) I think from our experience in the Foreign Office where the European Community is concerned we would be bound to say that the reports produced by this House are a constructive, helpful and useful contribution to the debates. Therefore, it is unlikely that any reports that this House was to produce on a broader matter of foreign affairs would be anything other than as interesting as that. But I think the complementarity with the Commons is important and, as I say, one is so inexperienced in the workings of your House that one hesitates to give any advice at all.

244. Lord Tordoff mentioned some of the evidence we have had from political and academic commentators, and so forth. Is it not a fact that although the debates on foreign affairs in the House of Lords are extremely valuable they have remarkably little impact on Government thinking, whereas a committee report has a chance of having much more effect? Would you accept that?

(*Mr Garel-Jones*) I am not sure I would. It may have little impact in the media but let me give you one example which affects my own Department at the moment, which is the whole question of the future of HMS Endurance. There is a substantial amount of interest in that matter in our own House as well, but we have been very much aware of the interest expressed in this House by a number of particular peers and that has certainly been taken into account in the Foreign Office. It may be perhaps that debates here are not of great interest to the media but I am not sure you should bid for that.

Lord Kearton] A committee would strengthen the viewpoint of the House and its effect.

Lord Dormand of Easington

245. Why should there be so much concern about duplication? Indeed, this Committee, if I may say so to the Minister, right at the outset said there should be no duplication of select committees. There is no support amongst us for such duplication. But in a field so very widespread as foreign affairs, it seems to me there is room for considerations to be gone into in some depth on different aspects of foreign policy. The simple thing—and I hope I am not oversimplifying this—is that when a select committee considers its programme for the session and decides that it will



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Dormand of Easington *Contd*]

have an investigation into this, that or the other, surely the chairmen of the two committees, one in each House, should simply get their heads together at the beginning of the session and ensure there is no duplication of investigation. May I say—and I am sure the Minister would be aware of this—when we had Sir Peter Emery giving some very valuable assistance he said quite specifically he could see no reason why the committees in both Houses should investigate different topics, with the proviso, if I may repeat myself, that there be clearance at the beginning of the session to ensure the same thing was not being investigated. It seems to me in a huge field such as foreign affairs there is no real objection with regard to the so-called problem of duplication of work.

(*Mr Garel-Jones*) I just make one observation on that, which is this: I have little experience of the world of diplomacy, having been in the Foreign Office only 18 months.

*Lord Tordoff*

246. You are a former Whip.

(*Mr Garel-Jones*) We do not go in for diplomacy in the Whip's Office at our end of the building.

247. We do here.

(*Mr Garel-Jones*) I know. One of the things that struck me is the extent to which quite important institutions and quite important individuals become very turf-conscious indeed, and indeed even within the European Community we have the turf-consciousness, let us say, of the Council of Europe in relation to the rest of the Community, the turf-consciousness of the Commission, and so on. I just have an uneasy feeling that, whilst your proposition clearly makes absolute common sense—why should people not meet and decide which issues they are going to discuss?—it could create an element of turf-consciousness and competitiveness between the two Houses which has been happily lacking in the whole area of the Community, which is the one that most concerns me, where, as I say, the efforts of this House have provided a happy complement to the work of the Commons. I do not think I could add any more than that.

Chairman] I know Lord Pym has to leave us fairly soon and I know he is particularly anxious to put one or two further questions.

*Lord Pym*

248. Yes, I wanted to ask if you could expound a bit more on the present position about co-operation between national parliaments and the European Parliament and, in particular, the national scrutiny that each member state applies. I think there is an impression that on the whole the British Parliament takes more trouble about scrutiny and does it in greater depth between the two Houses than perhaps any other. Some of the other parliaments do not really bother about it too much and regard it as the responsibility of Members of the European Parliament. So there is obviously a problem about co-ordinating the way in which each national

parliament carries out scrutiny and we know that the Government, through your Department, put forward for consideration at the Inter-Governmental Conference some ideas for co-operation and those are being discussed. That interests us very much. I would be grateful if you could let us know how that matter stands and how you view the whole future in the whole field of scrutiny by Member States.

(*Mr Garel-Jones*) It is a matter to which, perhaps because of our experience both in my House and in your Lordships' House, we in Britain attach a very high importance indeed. I think there is one other Community partner of a tradition very similar to our own, Denmark, which also attaches enormous importance to scrutiny at a national level. I think the Irish Parliament does too to a certain extent. As you have already said, Lord Pym, after quite a bit of consultation both in our own House and here, we have actually tabled a proposal to the Inter-Governmental Conference seeking to get a declaration on the role of national parliaments in the European Union. I think you have all seen the draft, and what the declaration does is to ask all Member States to undertake to send all Commission proposals for Council legislation to their national parliaments to provide an opportunity for them to be considered there and to ensure that Council procedures provide an adequate opportunity for scrutiny to take place in advance of decisions. I think that is something that would be taken for granted here and, indeed, would produce outrage if it did not take place. I think the decision we had to take was whether to try to insert this undertaking into the Treaty itself. On balance we felt that was not a wise thing to do because we did not think parliaments in Europe, any more than our own Parliament, would take kindly to being told in the Treaty how they should organise their own life inside their own parliament. We felt the wisest route to go down was the route of a declaration. We not only have the declaration on scrutiny but we also have a further declaration about the physical involvement of national parliaments in the work of the Community and of the European Parliament and vice-versa. Of course a lot will depend, if we achieve a Union Treaty in Maastricht, on our own Parliament, perhaps in co-operation with the Danish Parliament or other like-minded parliaments, stimulating a debate on this and stimulating action amongst other parliaments. I find myself, very frequently now when I am talking to colleagues in Europe, I send them a set of papers, I send them an EC draft Directive, having explained to them that we have the obligation to send this to the House of Commons within 48 hours of it appearing; I then send them a copy of the explanatory memorandum, which we are obliged to send within ten days to Parliament, and then I send them a copy of the debate that ensued in the Scrutiny Committee on that. I think that itself is beginning to stimulate a bit of interest in some national parliaments. I think we have a sort of national interest in stimulating this because frequently ministers from some other countries arrive at the Council of Ministers unencumbered (if I can put it that way) by the opinion of a national parliament and the constituents

15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Pym *Contd*]

that they represent. We would very much like to stimulate that and we think, when people talk about the democratic deficit in Europe, that there is a democratic deficit to be closed at home for some of our partners, and the sooner they close it the better.

*Lord Tordoff*

249. Does that not depend on how they see that democratic deficit being ultimately closed? We get into the whole argument, which is not really the purpose of this Committee, about the position of the European Parliament itself in relation to national parliaments. It is natural that the present Government would wish to go down that particular road, when many other European countries may not wish to go down the road, and indeed other parties in this country are rather more balanced towards increasing the power of the European Parliament?

(*Mr Garel-Jones*) That is a perfectly fair point, Lord Tordoff. I think our answer to that would be to say that the two are not necessarily incompatible. We would say that there is a clear democratic deficit at the national level in some parts of the community. Of course, others would say that, if you go through a scrutiny procedure at a draft Directive point, there is no reason why you should not have further scrutinies further down the line. We would say that if a piece of legislation is going to maybe come on to the statute book in Britain, or indeed any other country, that at some stage in that procedure national parliamentarians representing their constituencies ought to have an input into it. I do not think it is incompatible with the point you are making.

Lord Pym] Chairman, could I make my apologies to you, the Committee and the Minister because I have a long-standing commitment. I will read the evidence with great interest.

*Chairman*

250. Thank you very much, Minister. I would like to come back on what you were saying about the importance of some of the in-depth, deeply pondered as it were, reports of our European Communities Committee and the value which is attached to them both here by the Government and also in Brussels. You referred, for example, to this latest report on political union, which I must say I have not entirely digested myself as it came out in the recess. I was wondering what you feel the balance should be. Do you think it is best that the Lords Committee should concentrate on these in-depth surveys as a whole, or do you feel, as indeed the Lord Privy Seal was inclined to feel, that at times (there was a suggestion in his reply) our own European Communities Committee's reports were sometimes unduly long, sometimes unduly detailed and, because of that, were not always timely enough. Is there a balance there? Can that be met by the new procedure of letters to Ministers?

(*Mr Garel-Jones*) It is an interesting question, my Lord Chairman, and a difficult one to answer. I think there are two functions that your Committee seeks to exercise. Some of the reports are clearly focused and related to a piece of legislation. For these I think the

Committee certainly should attempt to meet the Community deadlines if the report is to carry the weight that it should. I think, clearly, also the shorter and the crisper those reports are the better. As I think I made clear in my opening remarks, we very much value the large in-depth reports which the Committee produces on a chosen subject, rather than the ones on legislative proposals. This second function has worked well in the past, and it is wholly complementary to the detailed scrutiny reports that the House of Commons carry out. There are limits, of course, to what the Committee can achieve and, therefore, a trade-off between the level of detail and depth of research involved in producing the report and the ultimate time limits of that report is inevitable. There is bound to be a trade-off between the two. In the area in which I am most involved, which is the political union IGC, I have actually found that the Committee's reports have struck a very good balance, both being detailed and timely as well. I have found the balance to be right. The report on economic and monetary union and political union, which was published in October 1990, we regarded as a very valuable contribution. It seemed to us it set the tone for quite an important debate that was then opening up. The most recent of the Committee's reports—which, alas, because it came out in August has perhaps not received all the attention it might have done on the law-making powers and procedures—was, again, very timely, very well received in Community circles, and those reports I value. I suspect that if pressed I would probably say that it is the more broad think pieces, if you like, that are the most valuable to us, rather than the detailed scrutiny points, because the House of Commons does do a pretty thorough job there. I come back to next year—I very much hope that we will be able to stimulate the Committee into giving some serious thought to enlargement. Enlargement is an issue that the Community must not just stumble into without people thinking very carefully about all kinds of difficult and complex issues. It seems to me that that is tailor-made for consideration by this House.

Chairman] Thank you, Minister. You will of course appreciate that we are looking at our whole select committee structure, and there is a very strong, almost insistent demand from the floor of the House, as it were, that we should be in a position from time to time to establish *ad hoc* select committees on given subjects. Some which have been set up in the past have been extremely influential, be they on private members' bills or on general topics. You yourself have suggested that, be it by establishing an *ad hoc* select committee or by an *ad hoc* sub-committee of the European Committee, there is one subject, that of enlargement, which might lend itself to this type of enquiry. Our resources, of Peers or of Clerks, are limited. I was wondering whether you would have any views on whether there is any way we could reduce the strain on our resources which the Select Committee on the European Communities imposes? I think, Lord Kearton, you have a question to ask on sub-committee structure.



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

*Lord Kearton*

251. Yes. I am very interested in the Minister's view on the "long think" pieces, as one might say. The Committee does a tremendous amount of work on various directives, proposals and so on, and I think perhaps they are done in too much detail in many cases, because for think pieces we take a very wide range of evidence, and this trend has almost grown up even if it is a single regulation or directive. We go into it in the same depth and very often the Committee can come to an opinion on it without anything like the in-depth investigation which we sometimes feel we are morally bound to do. Therefore, we have been trying to adopt in recent years shorter investigations with letters to Ministers. These are very seldom letters to the Foreign Office. They are much more concerned with other Ministers. We have the feeling that we might extend this much more, keep the enquiries into directives and regulations shorter and in a sense more opinionated as opposed to having a very careful trawling of all views up and down the country, so that we can put more time into think pieces. I gather this is something you are supporting.

(*Mr Garel-Jones*) Yes, I think that is the sort of flexible approach the Lord Privy Seal hinted at when he came here and certainly the more use of letters to Ministers is something we would—

252. We have found the work on directives and regulations quite important to other ministries and in some cases we have been asked specifically to do a rapid report on something in order that the Minister can take up a position at the Council of Ministers and so forth. But we can, I think, with profit shorten that and perhaps amalgamate some of the sub-committees that deal with such matters.

(*Mr Garel-Jones*) I would certainly support that.

*Chairman*

253. For example, it was suggested I think by the Reading Clerk in his evidence to us—and it has come up since—that there might be a case for amalgamating the sub-committee which deals with the environment with that which deals with agriculture. Both are very important but it has been suggested that they, and indeed transport, should all come under the same umbrella. This is rather a detailed question. I do not know whether you would have any views on that?

(*Mr Garel-Jones*) I do not think I would have any views that could be based on any real knowledge of your House, other than to say that inside Community legislation, which takes up so much of the time and effort of the Committee, the cross-border elements are commonplace and I think that will increasingly be the case too.

Lord Kearton] I think the Committee has been producing the same report about what to do about the CAP for the last seven or eight years. What has been lacking is action.

*Chairman*

254. I was wondering about the question which was asked about timeliness. If we are to move upstream, as it were, to consider general Commission papers or attitudes at a rather early stage, and given the fact that in the Commission and the Community as a whole the volume and velocity of work are, I suspect, tending to increase, have you any suggestions as to how we can meet the timeliness test or how the European Communities Committee can meet it? Is there any difficulty in making available to the Committee preliminary draft papers which the Commission may be producing?

(*Mr Garel-Jones*) I think there are two, maybe three, questions in there, Chairman. First of all, where the Commission issues green papers on legislative proposals, they are deposited in Parliament which gives the Committee an opportunity to influence thinking on them in advance of final proposals. Beyond this I think I can see advantages in the Committee taking a more forward-looking approach, as you suggest. As earlier comments made clear, I think on forward-looking subjects specific Lords' reports are probably the single most important contribution of the Committee but on the second question I can see considerable difficulty in making available preliminary draft papers which are not yet in the public domain. First, such papers are rarely available outside the Commission and the Council itself does not actually have sight of them. Secondly, by definition they have no status and are, in fact, liable to change. So I think the Committee could find itself tilting at huge windmills that were never then constructed or saw the light of day. As for the final part of your question, Chairman, I think it would be impossible to frame the rules for the deposit of EC documents in a way that did not by including such preliminary drafts also include a welter of other papers which would, I think, swamp the Scrutiny Committees. I do not think this would be a very desirable state of affairs.

255. I am interested to hear, Minister, the introduction of the Spanish windmill into what you are saying.

(*Mr Garel-Jones*) I hasten to say I was not placing your House in the role of Sancho Panza, but in that of the aristocratic Don Quixote.

*Lord Thurlow*

256. Minister, in reply to Lord Pym you have already covered the ground of duplication between the two Chambers, but is there anything further you would want to say about how you feel about the new arrangements for scrutiny and how they are working in the Commons?

(*Mr Garel-Jones*) Yes. It is a new arrangement, as your Lordships will be aware, and we have already asked the Procedure Committee to give us an update report on it. We are really waiting to see what that report says and to see whether there are any ways in which it can be improved. I think it is an illustration of the sheer volume and quantity and strain of the work that we have two of these committees. As you

15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Thurlow *Contd*]

know, the draft goes first to the Scrutiny Committee which decides which draft regulations should be open for debate and we have two such committees. I think I am right in saying they were being kept pretty regularly busy throughout the whole of last year. They also had a novel procedure for our House, which is that the Ministers appear first of all for an hour for, as it were, informal cross-examination and the Committee itself then dissolves into a committee and has a one and a half hour debate. I think it has been helpful for our House because a number of these directives used to appear very late at night, sometimes well after midnight, with few Members present anyway, and it is probably the case that the Committee has more Members present than one might have seen in the House after midnight—Lord Dormand would be very much aware of this point—when they were taken on the Floor of the House. Also I think it has been convenient to the House that this should be taking place in the morning and, therefore, if any of those directives are of particular public interest, the opportunity for the press, the media and the general public to see what is going on, and to be able to comment upon them, is also useful. But, as I say, we await the report from the Commons Procedure Committee to see if there are any improvements they recommend; if they make any recommendations we will certainly look at them. It also, I think, underlines reasons—I think there are two—why other national parliaments do not do this. The first one is it makes life slightly easier for ministers and governments not to go through this process. One of my colleagues described it as like going on “Brain of Britain”, you sit there in the chair and they ask you some quite difficult questions. So I think there are a number of governments who do not have this procedure and feel “Why should we go through it?”. But there is also the sheer volume of work. Mr Arthur will correct me if I am wrong, but I think last year something like 930 documents were sent from the Foreign Office to the House. It is a lot of documents to scrutinise and it is very hard pounding. I think some parliaments may be a little reluctant to take on that sort of burden.

257. Would you expect the result of the IGCs to lead to a progressive increase in the amount of stuff coming for scrutiny?

(*Mr Garel-Jones*) It is impossible to anticipate what the outcome of the Inter-Governmental Conferences will be, but you will be aware that one of the issues under consideration is the extension of competencies within the Community now. We remain to be convinced of the case for any extensions of competence whatsoever, but it is of course possible that the final Treaty may extend the competencies of the Community in some areas, and that will undoubtedly increase, I think, the volume of legislation. I do not expect the Treaty itself to alter in any way the basic mechanics by which the legislative process in the Community functions. I think that will remain much the same. I would not anticipate that you would need to alter your systems to meet any specific requirement of the Treaty *per se*. I think it is likely that it will produce more legislation than you are now receiving.

Chairman

258. Could I just ask a follow-up question to that. I know Lord Kearton and Lord Boston have questions they wish to put to you, but could I ask a follow-up question to that. We have been looking at the demand on resources which the European Communities Committee makes; it is very considerable—though nobody, you certainly have not, has denied the good work it does and the reputation it has. The chairman of the European Communities Committee, Lady Serota, in her very closely reasoned report to us argued strongly that possible changes in structure and ways in which the demand on resources might be reduced should be postponed until we know what the outcome of the IGC is going to be. On the other hand, in their evidence I think the Clerk of the Parliaments and, indeed, our Leader, the Lord Privy Seal have said that there is never an ideal time, and we should not really feel too inhibited by that in suggesting whatever we think is right. Maybe this is a bit too much *cuisine intérieure*, but I do not know whether you have a view on this, Minister?

(*Mr Garel-Jones*) I think the best guidance I can give you, my Lord Chairman, is the guidance I have already given you. I would not anticipate that any union Treaty signed at Maastricht would involve fundamental changes to the foundations, to the way in which this House or the other House carries out their work, frankly. Can I just add a rider to that. Except, of course, that inasmuch as our proposals for involvement of national parliaments in the work of the Community goes, then clearly one of the things that we will seek to do is to take the views, not just of this Parliament but of other parliaments in Europe, as to how this may be set up. There are a whole range of possibilities for involving parliamentarians from national parliaments in the work of the Community and vice-versa. For example, I give but one, would it be sensible for specialist Members of Parliament, whether from this House or the other, to be able to take part in debates and discussions in specialist committees in the European Parliament and vice-versa? Would it be helpful to the work of this Parliament if European parliamentarians were able to take part in or give evidence to debates of specialist committees here? Clearly, in that sense that would be an increase in the work. As I said, the principal point is that I would not anticipate the Treaty requiring a change in the foundation of the way in which this House or the other House worked.

Lord Kearton

259. There has been a limited experiment in this direction. I myself participated in discussions in Brussels on transport, so we have a precedent on a small scale for this?

(*Mr Garel-Jones*) Yes. I hasten to say that there is a grey area here where we do not feel as a Government that it is for us to impose the Standing Orders of the House of Commons, nor your own Standing Orders, but there are a number of areas, I think, where we might seek to institutionalise what is already happening. For example, there are already



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Kearton *Contd*]

quite useful meetings that take place informally between scrutiny committees of the various parliaments. The institutionalisation of those meetings might a) be useful to all the parliaments involved and b) might stimulate a more profound scrutiny in some of the parliaments where this does not now take place.

*Lord Thurlow*

260. Could I stray into the grey area of post-Maastricht in relation to the possible creation of one or more new pillars. If we had some new kind of pillar to deal with a range of foreign affairs would you consider, for instance, that European political co-operation would be a suitable thing for scrutinising?

(*Mr Garel-Jones*) No, I do not think it is so much a question of scrutinising that. I am not sure what arrangements exist in your House, but in our own House, of course, the Secretary of State has already fixed in his calendar, I think it is once every six months, a major debate on the European Community. It is also the case that when the Prime Minister returns from a European Council he immediately makes a statement in the House on that Council and is then questioned on it. I suspect that these areas of inter-governmental co-operation, whether it be in political co-operation or, indeed, in any new pillar that may or may not emerge from Maastricht (for example, in the area of interior and justice), I suspect that what will happen there, since this is an inter-governmental activity, that the Home Secretary will continue to respond in our House to Parliament both by statements, questions or whatever it may be. It is a curious thing, is it not, European matters are a sort of hybrid—they are half a foreign affair and half an internal affair. It will be interesting if, as we hope, the inter-governmental pillars of the union become a fact of European life. It will be interesting to see how the reporting by ministers taking part in an inter-governmental process to parliament develops. One of the advantages we have in this country, since we do not have a constitution, is that we are in the fortunate position of being able to make it up as we go along, which is sometimes very advantageous.

*Lord Kearton*

261. I am going to change the ground, if I may. You were very kind at the beginning in saying that reports of the various committees were helpful, useful and even occasionally had influence. You also made it clear that they have a pretty limited circulation. One of the things concerning us is, is the House too modest? We have even had suggestions from the media that we are too modest. If we are producing these excellent reports when one sees so much in the media that is ill-informed, and it even seems political species are ill-informed, would it be better to introduce more razzmatazz and generally promote them?

(*Mr Garel-Jones*) It is a very difficult question to answer, my Lord Chairman. Coming back to the British constitution, one of the many mysteries of the British constitution, which is difficult to explain to

some of our partners in Europe, is the very existence of this House. To attempt to explain that in the year 1992 we still have this kind of an institution is quite difficult. Having said that, I do not say this in any way to butter up your House, but I think one of the advantages that your House has is that it is not part of that almost compulsive need at our end of this building—

262. If I may say so, Minister, I have been associated with various think-tanks in this country and the best one I have ever been associated with is the House of Lords. Therefore, promoting it as the superior think-tank of the country might be rather useful.

(*Mr Garel-Jones*) Yes, but what I am not certain about is this: if you dip your toe into the world of razzmatazz I think you will find that inevitably you start talking about the “F” word rather than giving the kind of considered response that you did give to the question of the powers of the European Parliament, for example. I think it is inevitable. Maybe there is a way of combining deep, thoughtful, lengthy pieces with razzmatazz but I think it is inevitable that your audience is going to be a rather limited one. Two of those careful readers are sitting before you and there may be a few others in the Commission.

263. So much nonsense was spoken about the powers of the European Parliament and the various possibilities which might happen, to which the House of Lords was a factual corrective. There is something to be said for its reports getting wider circulation and wider promotion. “Razzmatazz” is perhaps too pejorative a word but I certainly do not think the House should be the shrinking violet which it has been for so many years.

(*Mr Garel-Jones*) It was very interesting in last week's debate in the European Parliament when Jacques Delors spoke up very strongly indeed about the role of national parliaments and clearly he is the kind of person who falls within your audience in terms of reading your reports.

264. You may not know this, but Jacques Delors takes the trouble both to see us and to write back on our reports.

(*Mr Garel-Jones*) I am not at all surprised.

*Lord Dormand of Easington*

265. May I go further on the point Lord Kearton raised. I was struck by what the Minister said in his opening statement referring to a number of our reports and saying how good they were, how greatly they were praised. What is more important to me is this: can the Minister say what actions the Government has taken on any of those reports, as they are so good?

(*Mr Garel-Jones*) Quite frankly, Lord Dormand, the reports do not necessarily call for action. Let me answer you in two ways. Sometimes—not always—what this House says in its reports does not reinforce the Government's position on a particular matter in the Inter-Governmental Conference or on a particular approach to the European legislative

15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Dormand of Easington *Contd*]

process. I think certainly in our own country the House of Lords is regarded as being not a particularly partisan place. Consequently, if an action or position that the Government is attempting to sustain in a negotiation in Europe receives an authoritative endorsement from the House of Lords I think that carries a certain amount of weight which is, of course, not unhelpful to the Government. Equally I think the Report on Legislative Procedures had a number of ideas in it which we thought quite interesting. Certainly my officials find there are a number of thought-promoting points.

Let me put it to you another way, Lord Dormand: I think when and if the Treaty is agreed at Maastricht you will find a number of the issues that have been debated by your Committee and included in the reports of your Committee may find their way into that Treaty. I can certainly assure you that the negotiating position that we take is frequently reinforced by arguments that we lift out of reports made by your own Committee.

*Lord Tordoff*

266. And occasionally undermined?

(*Mr Garel-Jones*) Occasionally undermined perhaps.

(*Mr Arthur*) I have one extra example which is your recent Report on CAP Reform, the last in a series, which has been advocating a certain type of change. We are now in the Community in the middle of a major debate on CAP reform which picks up quite a lot of those ideas. For the first time in several years we have a genuine chance to achieve some reform which, if it succeeds, will be in line with recommendations you have been making in those reports.

*Lord Boston of Faversham*

267. Lord Chairman, could I go back to a matter we were discussing and putting to the Minister at an earlier stage in our proceedings this afternoon, the proposal for a new select committee, a Foreign Affairs Select Committee here in this House? I hope I am not paraphrasing him inaccurately, but I think it is right to say that the Minister did not feel able to be too enthusiastic about that proposal because of the difficulties which he foresaw of possible duplication. But another suggestion in relation to that which has been put to us is that, if there were not to be a foreign affairs committee of this House, there should be a joint committee on foreign affairs of the two Houses. I was wondering whether the Minister had given any consideration at all to that possibility and whether he saw any scope for such a joint committee at all.

(*Mr Garel-Jones*) Again I think I would react with caution and I would react with caution for this reason, that in our own House (and I do not think our House should apologise for this, that is what it is there for) there is an underlying hard-edged partisanship, and I think the less the House of Lords is drawn into that the better because I think it would undermine your existing authority and add nothing to it.

*Chairman*

268. Minister, there are a couple of areas we have not covered. We must not detain you too long. The first is this: you have been commenting on the usefulness of our Committee's analysis and critique of proposals coming from Brussels and so on, and also the more carefully pondered longterm reports which they make. Quite a lot of the evidence which we have had from outside, specially I think from the academic world but also from the Bar and elsewhere, has suggested that one area which the Committee should not exclude is reporting on the implementation of Community legislation, be it in this country or be it in other countries which on the whole do not perhaps have quite such a good record in implementing Community legislation. I do not know what you feel about this?

(*Mr Garel-Jones*) As you know, Chairman, one of the aspects of the Inter-Governmental Conference to which we attach enormous importance is the standard of both implementation of and, indeed, compliance with Community law. Britain has one of the best records, in some areas the best. We are always, as it were, with the leaders of the pack, both in terms of implementation of EC directives and compliance with the decisions of the European Court of Justice. Our proposal that the European Court of Justice should be given powers to fine Member States who do not comply with EC law have been well received and, to answer your question as to whether it would be a possible role for this Parliament or for this House to be, as it were, a monitor on implementation, I think it would probably be unwise for two reasons really. First of all, I suspect that other European countries—no more than we would—would not welcome, as it were, foreign snoopers coming round into their own country attempting to investigate whether the law was being complied with or not. In essence this is a job for the Commission and the European Court. We have no doubt that the Commission itself and the European Court are as keen and as anxious as we are to ensure that the Community lives by the rule of law. I hate to say it but even as we sit here, with Britain shamed that we have one European Court of Justice ruling uncomplained with, one of our partners has no less than 38, so it is quite an urgent matter to be dealt with. There is one other point which has come up in the Inter-Governmental Conference, and this is the French proposal for a sort of *congrès*, as they call it, which would be an assembly made up of European parliamentarians and national parliamentarians 50:50. It has not been a particularly well received proposal. We are really neutral about it and are waiting to see, but it has not been well received. Interestingly, one of the powers that the French proposals sought to give to this congress, or *congrès*, was to follow up implementation and compliance, but it is not an idea that has run very well in the Inter-Governmental Conference. I think we would say, following these things up is ultimately a matter for the Commission and the Court, rather than individual parliaments.



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

*Lord Tordoff*

269. My Lord Chairman, I wonder if I could put to the Minister—and could I apologise for having to go to vote though I am pleased to say the Government was defeated by nine votes!

(*Mr Garel-Jones*) I gather it is not an unusual occurrence!

270. It is part of the wisdom——

(*Mr Garel-Jones*) Only when you have a Tory Government, you do not dare do it otherwise!

271. Arising from the answer you have just given, have you any comments on the regular six-monthly meeting of the Conference of European Affairs Committees and on the Assize Conference held in Rome last year?

(*Mr Garel-Jones*) I think the Assizes were not regarded as a howling success but, after all, it was the first attempt. Again, I think we remain slightly neutral with our arms folded. I do not think we would campaign against having another crack at it and seeing if it could be a useful instrument. I would just add one caveat to that. I think one of the things that we British try to inject into the Community is a note of caution at the end of the day in all these things. Just to make an obvious point, the running of the Assizes costs a lot of money, and that money is paid for by the taxpayer. I think we try not to support the setting up of any body or the making of a trip to any place just for the sake of it, but simply to try to ensure that the Assizes (if they are to exist at all) have a real purpose and perform some real work. I am not sure that all those who attended it, certainly in our House, felt that that was the case first time round. One of the interesting things about the Community is that it is still in its infancy. We have to be prepared to experiment and try things, so we would not object if there was an effort to add some focus to the Assizes.

Lord Tordoff] It may be, of course, that the style of the operation of this House has more in common with the Assizes than that of the Commons, I do not know. I would take your point on the cost of these things. One has to make sure they have some purpose.

*Chairman*

272. Am I right in thinking that you are perfectly happy with the other institution, which is becoming institutionalised I think, which Lord Tordoff mentioned that is the six-monthly meeting of the scrutiny committees of the various national parliaments?

(*Mr Garel-Jones*) Yes, not only do I think that is a useful forum, but it is the kind of thing that perhaps, after the Inter-Governmental Conference and based on the declaration, we ought to consider institutionalising. It does perform a very useful purpose. Certainly our people who attend it feel that it does.

Lord Kearton] I attended the Assize Conference and I agree entirely it was, of very, very limited value indeed, a lot of rhetoric about nothing.

*Chairman*

273. I do not know in this whole area of co-operation between Westminster, Brussels and Strasbourg whether there is anything else you would like to add, Minister, as to what we should be thinking about. Of course, I have seen the proposals, which you have mentioned, by the Foreign Office and also the proposals made by Mr Cravinho, the Vice-President of the European Parliament, for closer interchange. I do not know if there are any particular aspects of that you would like to comment on, or anything else which would be useful to pursue?

(*Mr Garel-Jones*) I think there are only two comments, my Lord Chairman, that I would make. First, is a point I have already made. We hold the Presidency of the Community in the latter half of 1992, and we have already had a meeting with our Portuguese friends who hold it in the first part of 1992, and we both agree that, maybe starting off in the Portuguese Presidency and perhaps overlapping into our own, a serious discussion on enlargement is necessary. I would have thought if your Committee could find the time and the energy to address that huge subject that would be very timely indeed. On the question of interchange, I think in a sense we have to wait until the Treaty is signed, but once the Treaty is signed I very much hope that our Parliament, maybe in discussion with the Danes and the Irish and those whose traditions are more similar to our own, might actually come forward with a series of suggestions as to how this interchange can be brought about. I think this is the point Lord Kearton was making earlier, there is a terrible danger, is there not, in our world of creating committees and institutions just for their own sake. I think the sooner we get in with some hard-nosed proposals that actually give the taxpayer value (and if you are going to be bringing European parliamentarians here or our parliamentarians are going to be there, they want to be going to do something useful that has a purpose), the sooner we get in with proposals and suggestions of our own the better.

Lord Kearton] In the European sub-committees we have often taken evidence from MEPs and they have usually been the chairmen of various committees in the European Parliament and that has been a very valuable input indeed and a very valuable exchange for the House of Lords Committee and for the MEPs themselves.

*Lord Tordoff*

274. Could I come back to a point I meant to take up earlier. Of course, that is what this Committee is trying to do, trying to see whether the House of Lords select committees are giving value for money and the different ways of structuring ourselves to give better value for money. One of the things that you have referred to, and everybody has referred to, is the fact that the reports of these select committees of ours are very well thought of. On the other hand, just to test out whether this is not a general feeling of warmth, motherhood and apple pie, you said earlier that the reports are read by a wide number of people and you pass things on to people in Brussels. Do you get any



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued]

[Lord Tordoff *Contd*]

specific feedback on that? The thing we are short of is hard evidence of these reports really being taken not just seriously but having practical effects. So many times people say, "Yes, we think these reports are marvellous".

(*Mr Garel-Jones*) The only example that comes immediately to mind is one that, at this stage, I do not want to give you because it was in an area where you were making recommendations that were not on all fours with what it was we were seeking to do. I am sure it will please you to hear that one of my colleagues in Europe actually dangled the House of Lords report in front of me and said, "Look, your own House of Lords is saying this". I would rather not identify what it is at the moment because it is a point of contention within the Inter-Governmental Conferences. I cannot think of any other specific examples off the top of my head.

Lord Kearton] We did a report on the European Court of Justice's procedures and one of the things we recommended was that it should establish a Court of First Instance, which it did.

Chairman] I do not know whether members of the Committee have any other particular points they would like to ask the Minister about?

*Lord Thurlow*

275. I wonder, my Lord Chairman, if the Minister could give us any guidance, however rough, as to how long it is likely to take to ratify and implement anything that emerges out of Maastricht?

(*Mr Garel-Jones*) The first stage is signature and, assuming we get an agreement at Maastricht, signature could be possible within two months of Maastricht.

(*Mr Arthur*) Yes.

(*Mr Garel-Jones*) Thereafter, the objective is to ratify by the end of 1992. We would not regard ourselves as being in a position to ratify until we had implemented the amendments to the Treaty of Rome that are likely to flow from the new Treaty. So the sequence of events would be, if there is an agreement in December, signature might be by the end of February-March and a Bill would need to be introduced and taken to all stages before the end of 1992, thus enabling us to ratify by the end of the year. It will not have escaped your notice that during that time there are other events that may be taking place around which these signatures and ratifications and introductions of Bills will have to be built.

*Lord Dormand of Easington*

276. Lord Chairman, I ask the Minister's forgiveness for the question I am about to put. It seems to me we ought to have some response. I am one of those people—I think there are a few of us in all the three major parties—who are not very enthusiastic about the European Community or, should I say, the structure of the European Community and the way it has developed. It does seem to me in both the House of Commons and the House of Lords we are losing the battle. One of the reasons why we are losing the battle is that the structure which includes the committee structure—

that is why I am raising it, Lord Chairman—does not provide an adequate forum for us. Can the Minister say whether there is better provision (I am really seeking information here but I would like his comments on it as well because he now has at least 18 months' experience of that) in Europe than there is in the British Parliament for looking at any views I hold and others in the Minister's Party hold (because they are the cause of some controversy at the moment)? Is there anything we could adopt in our Parliament if there is anything superior in his view in the European Community?

(*Mr Garel-Jones*) It all depends, Lord Dormand, on what battle you are referring to. I think one of the difficulties we face in Britain is that about once every five years we feel the need to have a debate about whether we ought to belong to the Community or not. I rather hope, now that all parties in this nation are likely to be fighting on a platform that takes our membership for granted, that we are moving away from a position where we actually have to have a debate once every five years about whether we belong to it or not. If we can take that battle as over, if that is the battle you are referring to, I very much hope we do not have to have that battle again. Assuming that battle to be over the discussion now is, how can we make the Community work in the way that seems to each one of us best, both in our own national interest and in the interest of the sort of ideology we support? I think one of the things that will emerge as the European Parliament gains growing legitimacy is that party groups, which are not yet as clearly defined or cohesive as they are in the national parliaments, will begin to emerge. Your own party is now part of the European Socialist Group, my own party is, I think, about to take up what I think might be described as "country membership" of the Christian Democrats. There is a Liberal Group in the European Parliament, although I am not sure that the European Liberals and British Liberals are the same thing - but no doubt they discuss that in their group. I think this is going slowly, and this is one of the points we would make in our general approach to the European Parliament—it is by any standards a new and infant parliament and, therefore, we do not think it is in any sense questioning its democratic legitimacy for us to wish to proceed with caution in giving it new powers. As it obtains those new powers I have got no doubt that European socialism and European christian democracy or liberalism, or whatever it may be, will become more cohesive, and the opportunity to fight (if one wishes) socialist battles on a European scale will increasingly become available. I am not sure if those are the battles you are referring to. There are some in our House, and indeed in yours, who would like to have an annual five-yearly debate as to whether we belong in the Community or not. I think they are a dwindling minority.

Lord Dormand of Easington] The battle for membership is now over, and for some of us that is regrettable but we accept it. What some of us are saying is that the developments could be a darn sight better than they are, I am afraid, as in the Minister's party, which is happening. All I was saying was I



15 October 1991]

MR T GAREL-JONES, MP AND MR M ARTHUR

[Continued

[Lord Dormand of Easington *Contd*]

hope with the structure, particularly in Europe and that involves the British MEPs, that there would be adequate provision for the very strong views which some of us hold. The Minister went most of the way, my Lord Chairman, and I am grateful to him.

*Chairman*

277. Minister, you have scored very freely and fluently all around the ground. I wonder, by way of conclusion, if I may bowl you a long hop or a full toss which you will deal with. My final question to you is, I think our European Communities Committee do their best with the increasingly fast moving legislative process in the Community. Sometimes I think they have been a little worried about the delay in getting a substantive reply to their more important reports. There is an impression in the evidence given to us that there should be a reply within, say, a month. I do not know what your comment is on that?

(*Mr Garel-Jones*) I know, my Lord Chairman, that the Committee has raised this with the Lord Privy Seal.

278. You have seen his comment on that?

(*Mr Garel-Jones*) I have seen his comment on that. I think he is preparing a more detailed response for you. I think our view is that it is certainly

reasonable for this Committee to expect as prompt and as timely a response to their reports as possible, particularly if we had been, as we discussed earlier on, urging the Committee to produce the reports more quickly in order to make them more relevant to the debate that is running ahead. My guess, looking at my own Department, would be that a formal response, a formal reply within a month might be rather tight for us. To give you an example: a fairly simple constituency letter has a turn around period of at least a fortnight or three weeks, even within an efficient Department like the Foreign Office. One month might be a bit tight, and it might actually encourage rather the opposite effect to the one that you intend, namely, that they would regard the reply as a formality and not give it the kind of detailed reply that you would like. I certainly would not like to see replies to reports extending beyond two months. I think that would be too much. I think somewhere around there it ought to be possible to satisfy you and to give you the kind of response that you ought to be having.

Chairman] Minister, I think that is a very helpful reply. Indeed, all the evidence you have given us has been helpful. I think it is fair to say, and I do so on behalf of our Committee, that you have done us proud, as indeed we expected you to do. Thank you very much indeed.

TUESDAY 12 NOVEMBER 1991

Present:

Bancroft, L	Pym, L
Dormand of Easington, L	Thurlow, L
Jellicoe, E (Chairman)	Tordoff, L
Kearton, L	

**Note by the Lord Privy Seal**

This memorandum sets out the Government response to questions raised by the Select Committee subsequent to my oral evidence of 23 July 1991.

*Is it reasonable to expect the Government to respond substantively in writing—if only in the form of a ministerial letter—to all European Communities Committee reports within a month or two of publication?*

*The Committee understands that it is now Government policy to respond to all their reports: is it correct? If so why do written responses—eg those on Unfair Contract Terms and the European Company Statute—take so long?*

I agree that the Government should normally respond in writing to all European Communities Committee reports, though in some cases, for example where the recommendations in the report are wholly in accordance with the Government's views, the response may only need to take the form of a short letter from the Minister. However where the report is to be debated and there is some urgency in the timing of the debate it may not always be practical for the Government to provide a written response in the time available. I hope the Committee would accept that in these circumstances a full written response may not be necessary.

As I indicated when giving oral evidence, I believe that rigid rules on the timing of responses would be counter-productive, given that the circumstances and content of reports vary so widely. Ministers need a reasonable amount of time to consider the reports if their replies are to do justice to the Committee's work. Therefore I hope that the Committee will accept that the Government should normally respond in writing within two months. Sometimes a reply might take longer, but I would not normally expect it to take more than three months. If the Government was unable to meet this timetable in any individual cases the Minister concerned would write to the Chairman of the Committee to explain the delay. In those cases where it proves necessary to arrange a debate within two months of the report's publication, the Government would endeavour to make its response available at least one week before the date of the debate, subject to the point raised above about practicality.

I know that the written responses to the two reports mentioned by the Committee, on Unfair Contract Terms and the European Company Statute, took longer than the Committee, or the Government would have liked. In the light of the undertaking I have given above such delays should not occur in future.

*The Commons are considering granting MPs an entitlement to claim limited travel to the Community institutions. Might it be appropriate to apply such an entitlement in the Lords simply to members of the European Communities Committee?*

I understand that the European Communities Committee already has access to the Committee Office travel budget and makes use of it to visit the Community institutions when necessary to pursue its enquiries. It is difficult to envisage circumstances in which it might also be justified to provide travel expenses for members of the Committee or its sub-Committees to make *individual* visits since no constituency interests would be involved. Therefore I doubt that it would be appropriate to provide for such arrangements for individuals rather than Committees.

*What criteria are used for deciding which EC documents are to be formally deposited in both Houses? Why are documents tabled in the Inter-Governmental Conferences—some with profound implications for the country and the House—not deposited, even those few which have been reluctantly made available to Peers?*

The criteria from deciding which EC documents are to be formally deposited in both Houses are laid down in the Terms of Reference of the House of Commons Scrutiny Committee (House of Commons Standing Order 127). They define "European Community Documents", which are subject to scrutiny, as:

- (i) any proposal under the Community Treaties for legislation by the Council of Ministers;
- (ii) any document which is published for submission to the European Council or the Council of Ministers;



12 November 1991]

[Continued]

- (iii) any document (not falling within (ii) above) which is published by one Community institution for, or with a view to submission to, another Community institution and which does not relate exclusively to consideration of any proposal for legislation;
- (iv) any other document relating to European Community matters deposited in the House by a Minister of the Crown.

Under this definition, certain types of document are deposited automatically. These would include, for example, formal legislative documents sent to the Council, that is, proposals from Directives, Regulations and Decisions, including formal amendments from the Commission to legislative proposals; proposals for non-legislative action by the Council such as draft Resolutions, Recommendations and Opinions as well as Commission reports or communications to the Council; and documents published by one Community institution for submission to another, such as reports to the European Parliament and Court of Auditors' reports. Certain other types of documents falling into category (iv) above are deposited at the Government's discretion. In many cases this follows from a specific request from the Scrutiny Committees; the Government has undertaken to view such requests sympathetically.

The Cabinet Office acts as a co-ordination point for all European Community documents to ensure that the rules on deposit of documents are applied consistently and carried out promptly.

Documents tabled in the Inter-Governmental Conferences (IGCs) on Political and Economic and Monetary Union do not fall within the terms of reference of the Scrutiny Committees; as inter-governmental documents, they do not satisfy the definition of "European Community documents" set out above. For the most part, the Presidency have asked member states to respect the confidentiality of IGC negotiating documents, which is standard procedure in any sensitive international negotiation.

That said, where such documents have become publicly available, such as the draft treaty texts tabled by the Luxembourg Presidency in April and June this year and more recently by the Dutch Presidency in September, the Minister of State, Foreign and Commonwealth Office has sent them on an informal basis to the Chairman of the EC Committee soon after they have been tabled and has made sure they are available in the Library of the House.

*How does the parliamentary reserve affect negotiations in the Council? How many proposals are agreed to before the scrutiny process is complete? Why? Do you think all such cases are justified exceptions to the rule that Ministers will not agree before scrutiny is complete?*

The Government's undertaking not to vote in the Council of Ministers on proposals which have not cleared scrutiny is set out formally in a Resolution of the House of Commons of 24 October 1990. However, the Parliamentary scrutiny reserve is not formally enshrined in Community law or procedure and does not affect either the tactics or substance of negotiations in the Council. It is simply a means of deferring formal adoption of legislative measures until proper scrutiny by Parliament has been completed; its use depends on the co-operation of other member states and the Council legal services. It therefore would not be possible to attempt to use the reserve to influence the substantive outcome of negotiations.

Clear guidance is provided to all departments on the circumstances in which agreement to proposals may be given before scrutiny is complete and all cases are examined with care against the agreed criteria. The circumstances in which this may apply are those set out in the Resolution of 24 October 1990, that is:

- (i) where the Committee has indicated that agreement need not be withheld;
- (ii) where the proposal is confidential, routine or trivial in nature, or is substantially the same as a proposal on which scrutiny has been completed;
- (iii) where there are special reasons for giving agreement, such as the need to avoid a legal vacuum; the desirability of permitting a particularly beneficial measure to the United Kingdom to come into effect as soon as possible; the difficulty in entering a late reserve after protracted negotiations on measures having little effect in the United Kingdom; or where a particularly important consideration was at issue.

The number of proposals which are agreed before the scrutiny process is complete represents a small proportion of the documents considered by the Committee. It is difficult to give a completely accurate picture because records of such cases are not kept centrally. However, we estimate that since October 1989 about 100 proposals were agreed to before scrutiny was complete out of about 1600 documents deposited. In up to half of the cases the proposals fell within the terms of paragraph 3 of the Resolution of the House of Commons, that is the proposals were confidential, routine or trivial in nature or substantially the same as one on which scrutiny had been completed. In the other cases there were special reasons for agreement before completion of scrutiny. The reasons varied in each case but included for example measures of urgency for humanitarian reasons, measures particularly beneficial to the United Kingdom or measures where urgent action was necessary to avoid disruption to United Kingdom industry.

*12 November 1991]**[Continued]*

On all occasions where a scrutiny reserve is lifted for special reasons of the kind outlined, there is a duty on the Minister concerned to inform the Scrutiny Committees fully (or the House where the proposal is awaiting consideration by the House). I believe that these arrangements normally work well and help to ensure that Ministers retain negotiating flexibility whilst still respecting the principles of parliamentary scrutiny of EC legislation.

Waddington

*18 October 1991*

### **Memorandum by the Lord Privy Seal**

Before addressing the specific proposals put forward by the Clerk of the Parliaments in his three memoranda, this memorandum looks at some general issues which arise on any proposal to introduce a select committee approach into the legislative process. The prospective advantages of select committee consideration of bills, involving evidence-taking and a report which informs all Members of the House and the Government of the committee's findings, are to import some of the strengths of select committee work into the scrutiny of legislation. The intention would be to secure more detailed, better informed, and more penetrating scrutiny. But this is not an end in itself. Additional scrutiny is only justified if it leads to better legislation. Proposals to supplement existing scrutiny rest on the premise, for which no firm evidence has been produced, that existing procedures are unsatisfactory. Any addition to existing procedures is likely to create difficulties which must be balanced against prospective advantages. The difficulties relate primarily to timing and business management, and the Government must be concerned about proposals which might make it more difficult to carry through its legislative programme.

2. The select committee approach, where it involves evidence-taking, is necessarily time-consuming. The processes of inviting written evidence, taking oral hearings with a range of interested parties, seeking further views as necessary on the evidence which has been submitted, sifting evidence and producing a written report cannot be compressed beyond a certain degree. One possibility is for committees to take evidence but not produce a report. In the context of scrutiny of legislation the Government doubts the value of this, particularly if it were to be a regular practice. There is invariably a large amount of commentary on legislation from a range of interested parties, and it is the committee's examination and assessment rather than the process of evidence-taking which would be the added value of select committee proceedings.

3. A select committee must make its contribution, including the production of a report, during the relatively restricted period between introduction of a bill into the House, and the time when the House considers the legislation in detail. A report by second reading is ideal, a report before committee stage stands a good chance of being helpful, but thereafter there are rapidly diminishing returns as opportunities for constructive reconsideration and amendment are reduced. The select committee could not effectively consider any material introduced into a bill at committee stage, or report.

4. The Government is inclined to the view that the select committee approach is most useful, as in the Commons, for the sustained scrutiny of the policy, administration and resources of departments, or, as in the Lords, where a detailed expertise is applied across departmental boundaries on European legislation or science and technology. The technique can be used only sparingly in respect of legislation, and may then often be best applied at the policy-formulation stage which precedes legislation, or in respect of implementation, when a committee might analyse whether legislation is having its intended effect. As the Clerk's memorandum indicates, select committees on public bills have tended to concentrate on a small number of bills chosen for the purpose, often concerning moral and social issues on which opinion was not divided on party lines.

5. If the select committee consideration of public bills is to be extended, committees would have to work differently and very much more rapidly. Moreover the Government doubts whether some of the options considered by the Clerk could be effective, or would in fact save time.

6. The Government agrees with the Clerk that extending the time available for consideration by starting such consideration while a bill is still in the Commons might be criticised with some justice as pre-empting the deliberations of the Commons. It is fundamental to the legislative process that it is sequential: bills are considered in the House of Lords as amended by the Commons, and vice versa. Concurrent consideration might lead to difficulties if a line of thought developed in one House which was incompatible or appeared to compete with the development of consideration in the other. Although a committee might hold back from publishing a report until the bill concerned had been introduced into the Upper House, evidence taken in open session would be reported, and would be likely to be taken up out of context and without benefit of cross-examination in the Commons. This difficulty would be more acute if it were expected that ministers or officials should appear as witnesses before a committee of the House of Lords while a bill was still before the Commons. This would certainly place an additional burden on them at a time when they are likely to be fully stretched, and create particular difficulties if officials were invited to give evidence concurrently on controversial matters which their ministers were debating in the Commons.



12 November 1991]

[Continued

7. The Government therefore concludes that the process of evidence-taking, if it is specific to legislation, should not begin until the bill is introduced in the House of Lords. Moreover, in view of the pressure on the legislative programme, it sees only very limited opportunities to adapt the timetable of bills to accommodate select committee consideration. The Government could not support any new process which, by putting additional constraints on the parliamentary timetable, made it more difficult to enact legislation. Select Committee work would need to be fitted in to the parliamentary timetable, including the existing minimum intervals between stages.

#### *Evidence from officials*

8. Any evidence given by officials, including parliamentary draftsmen, to a select committee would need to be given on the same basis as any other evidence by officials to Parliament. Officials would appear on behalf of ministers. They could not be expected to express personal views. This limits the scope for the discussion of amendments without reference to ministers. The Clerk's references to the scope for a "direct exchange of views", or the hope that the "presence of draftsmen and civil servants would obviate the need to filter views through the front benches" (paragraph 15 of the Memorandum on *Select Committees on Public Legislation*), do not fully reflect the constitutional position of officials giving evidence to Parliament. While civil servants may be able to give committees some assistance on factual and technical matters, it is likely, if scrutiny is extended beyond the range of politically uncontroversial legislation, that examination would raise policy and political questions on which ministers would be best able to assist the committee. The burden on the front bench would need to be taken into account. The Government does not accept that there are matters of drafting policy in which Parliamentary Counsel, rather than ministers, have the leading role. Ministers are accountable to Parliament for the drafting as for the content of bills.

#### SELECT COMMITTEES ON PUBLIC LEGISLATION

9. In his memorandum on *Select Committees on Public Legislation*, the Clerk of the Parliaments has put forward proposals for a new system of Special Standing Committees to replace or supplement the committee stage of public bills. The Government sees considerable difficulty in these proposals.

10. The committee stage of a bill is the main deliberative stage where the detail of a bill is closely examined. In the Lords that stage is normally undertaken by a committee of the Whole House. Provision exists for a bill to be committed after second reading to a Public Bill Committee instead of to a Committee of the Whole House. When this procedure is invoked (and it has only been used rarely) time is saved on the floor of the House if the bill proceeds to report stage without any recommittal to the floor. Provision also exists for a bill to be committed to a select committee which may take evidence as well as make amendments to the bill. In such cases the committee makes a report to the House and the bill is recommitted to a Committee of the Whole House. This in effect interposes an additional stage in the passage of a bill.

11. In his memorandum the Clerk makes clear that he is not concerned with Public Bill Committees and simply getting bills off the floor, but with the further development of provision for evidence taking by committees. The Government recognises the importance of adequate and effective scrutiny of legislation in the House. It considers however that those requirements are met by the existing procedures which provide ample opportunity for the consideration and revision of legislation brought before the House. Even if additional or deeper scrutiny were to be considered this would only be worth-while and could only be justified if it informed or assisted the legislative process by providing relevant briefing or reports for the use of the House as a whole in its consideration of a bill, and/or by improving the quality of the legislation eventually passed. Even then it would be unacceptable if this added to the overall time taken for the passage of a bill through the House because of the implications for the parliamentary timetable as a whole.

12. It is suggested in the Clerk's memorandum that the proposals could save time on the floor of the House. This seems doubtful if there were still to be a committee stage. Any real saving in time could only be achieved if the proposed committee replaced the existing committee stage, but even then the proceedings would be likely to take longer than a committee stage on the floor and bills would take longer to pass through the House. In the memorandum the prospect of the proposed special standing committees sitting over three to four weeks is floated. This would not be acceptable to the Government if it is implied that such an interval would need to be created between the stages of consideration on the floor of the House. The suggestion that the proposed procedure might replace committee stage on the floor is probably unrealistic. As is noted in the memorandum, the House has in the past been unwilling to surrender this stage to a committee off the floor. Furthermore, the idea that parties could put a reserve on matters in committee and raise them as well as reopen other matters at the report stage casts considerable doubt on the value of the whole proposal.

13. It is also suggested that such committees might provide a forum where amendments could be discussed, and that the draftsmen and departmental civil servants might attend and participate without the need to involve the front benches. For the reasons given in paragraph 8 above, this may oversimplify the constitutional position.

*12 November 1991]**[Continued]**Summary: select committees on public legislation*

14. However implemented, the proposals in the memorandum would in effect create an additional stage in the legislative process and be likely to lengthen the time taken for bills to pass through the House. If so, this would not be acceptable to the Government.

**MEMORANDUM ON COMMITTEE ON DELEGATED LEGISLATION AND ON THE CONSTITUTIONAL IMPLICATIONS OF BILLS**

15. In his memorandum on committees on delegated legislation and the constitutional implications of bills the Clerk acknowledges the proposals from Lord Rippon on these topics which the House has debated. The Government acknowledges that in recent years concern has been expressed in Parliament (mainly, but not exclusively, in the House of Lords) about the ability of Parliament effectively to challenge the policy content of subordinate legislation made under delegated powers given in Acts of Parliament. There is a view that government bills sometimes contain wide, and sometimes ill-defined, order-making powers giving a minister virtually unlimited discretion, and that these powers too often receive inadequate consideration by Parliament. The species of order-making power which has been particularly criticised is the “Henry VIII Clause”, an expression used to signify a power for a minister to amend primary legislation by subordinate instruments.

16. The Clerk invites the Committee to consider whether Parliament has sufficient scrutiny powers over the Executive’s use of delegated legislation, and whether such a committee as that proposed by Lord Rippon would enable Parliament to exercise more effectively its scrutiny of delegated legislation.

*Delegated Legislation—the need for consensus*

17. A committee to examine provision for delegated legislation in bills would be best placed to operate effectively if it could work to a generally accepted consensus of what should be reserved to primary legislation, and what is appropriate for delegation to subordinate legislation. While some principles are widely accepted there is no settled consensus, and before establishing a select committee for this purpose the Committee may think it necessary to explore, in consultation with the Commons, how far it might be possible to reach consensus. In the absence of any agreed criteria which could be applied to the many different circumstances dealt with by individual bills, it is difficult to see how a select committee could pronounce authoritatively on the matters within its suggested terms of reference. Unless a reasonably clear set of ground-rules can be agreed, a select committee might find itself in some difficulty, in that vigilance against the unwarranted assumption of powers might in some circumstances be difficult to distinguish from political opposition to the underlying policy which the powers sought to achieve.

18. It is possible that specific criteria satisfactory to a wide range of circumstances and opinion may be difficult to define. In the Government’s view, its practice of delegation to secondary legislation of purely consequential matters spares the Statute Book a mass of technical detail which would otherwise merely add to the length of bills and which, if contained in primary legislation, would impose impossible burdens on Parliament. Despite the Government’s determination to use subordinate legislation in appropriate circumstances, it could be argued that it does not go far enough, that too much technical detail is included in primary legislation which should be reserved for statements of general principle, and therefore that more should be entrusted to subordinate legislation. There is also a view, the proponents of which have no great difficulty in finding supporting examples, that subordinate legislation itself is commonly too technical and complex, and attempts to define matters which would be better left to administrative discretion, and/or the judgement of the courts. These are important but controversial matters, on which it may be difficult to reconcile opinions.

19. Conversely there are matters which it is generally agreed should not be left for subordinate legislation. An example is the creation of offences with penalties dependent on the subordinate legislation rather than the Act which confers the power. Another example would be the imposition of taxation, although powers have been conferred to vary certain *rates* of tax within limits by subordinate legislation.

20. The Government has set out its position on “Henry VIII” provisions in several debates, including the debate on Lord Rippon’s motion on 14 February 1990. Its view is that in a limited range of circumstances a power to amend primary legislation by order may be justifiable. Ministers have undertaken that such powers will not be sought without the most careful consideration, and they invariably attract the special attention and scrutiny of the House.

*Defences against unreasonable provisions*

21. There are several screening processes which help to prevent the unreasonable or undisciplined use of order-making powers. Parliamentary Counsel may take up instructions to draft powers which are unnecessarily wide with the minister in charge of a bill, and if necessary with the Law Officers. Discipline is also provided by the fact that a department knows that, after the bill has been enacted, its use of delegated powers will be scrutinised by the Joint Committee on Statutory Instruments, which is empowered to report to both Houses on various grounds, including where the Committee considers that there has been some



*12 November 1991]**[Continued]*

unusual or unexpected use of power in delegated legislation. Furthermore, if a power is inappropriately defined doubt might be cast upon the *vires* of the orders or regulations giving effect to the minister's policy, which could be the subject of a legal challenge in the courts. Above all ministers can be called upon to explain and justify their assumption of order-making powers, which will generally be much-debated during a bill's progress, particularly at committee stage in both the Houses.

*Limitations on scrutiny of proposed use of powers*

22. A committee examining the *purpose* of order-making powers in bills could not at the same time scrutinise the *product* of those powers, as the Government could not be committed to making available draft instruments while the bill itself had yet to be enacted. It is often desirable to take time to develop and consult on the contents of subordinate legislation, and consultation is sometimes a statutory requirement. It may therefore be impracticable, undesirable or ineffective to begin this process while consideration of the primary powers is still in progress. Scrutiny of the use made of the powers can only be effective when draft instruments are available, which may be many months after enactment, and is the province of the Joint Committee on Statutory Instruments. The Government understands that the intention is to complement and not overlap the functions of that Committee.

*Summary: select committee on delegated legislation*

23. If the Committee is inclined to favour a select committee to scrutinise provision for delegated legislation in Bills, the Government suggests three conditions:

- (i) the Committee should first seek to establish whether a consensus can be established on the proper and improper use of order-making powers;
- (ii) it should be clearly understood that a standing select committee could not in its consideration of the enabling powers see draft instruments; it could inquire about the general purpose of powers, but should not expect full detail as to their proposed use, which may often be subject to further preparation and consultation;
- (iii) any standing select committee should be established on a limited and experimental scale in the first instance.

*Constitutional implications of Bills*

24. The Clerk's reference to the possibility of a Committee on the constitutional implications of bills is not fully developed. As indicated, the functions of such a committee are more difficult to define in the context of an unwritten constitution. The Government is not aware of any general or recurring difficulty over the imposition of new penalties or offences. Consistency on such matters within Government is maintained through the overall responsibility of the Home Office for the criminal law. The Government endeavours to take account of the implications of new proposals for the courts. It stands ready to consider any observations the Committee may have.

ENVIRONMENTAL ASSESSMENT

25. The Clerk's third memorandum fleshes out proposals for a committee on the environmental impact of bills. The Government strongly agrees, as indeed the Clerk notes in his reference to the White Paper on the Environment *Our Common Inheritance* (Cm 1200), that protecting the environment requires better information about what is happening to the environment and the impact of various policy options on the environment. The government remains committed to the policy aims of the White Paper. The Department of the Environment has issued a new guide on *Policy Appraisal and the Environment*, the aim of which is to help civil servants appraise the environmental implications of Government policies. It shows how to identify and analyse such impacts and to put them in perspective, setting out different techniques which can be used to express a range of impacts in common terms, thus enabling comparison of costs and benefits and helping, in the words of the Clerk's memorandum, to narrow down differences of opinion about the environmental impact of policies.

*European Community Dimension:*

*EC Directive 85/337/EEC*

26. An EC Directive which came into effect in July 1988 requires Member States to introduce procedures for subjecting major development projects to a process of environmental assessment before giving consent to the scheme. This involves the preparation and submission by the developer of an environmental statement relating to his proposals and to their environmental effects. This statement, together with public comment on it and other information, has to be taken into account in the assessment procedure before consent is given. The Directive does not apply to projects approved by a specific Act of national legislation because the objectives of the Directive, including that of supplying information, are achieved through the legislative process. The Government has, nevertheless, promised that for hybrid bills which they promote relating to projects to which the Directive would otherwise apply, environmental statements will be provided.

*12 November 1991]**[Continued]**Proposed EC Directive on environmental assessment for policies, plans and programmes*

27. The European Commission is currently considering a proposal for a directive which would require environmental assessment procedures to be applied before any government policies, plans and programmes are approved. This proposal has still to be adopted by the Commission and transmitted to the Council of Ministers. While the Government supports the underlying intention of ensuring that the environmental implications of proposals of all kinds are properly understood and taken into account in the decision-making process, it sees considerable difficulties in applying a uniform procedure as envisaged in the proposal to the wide range of decision-making processes that exist in the United Kingdom, let alone the Community as a whole. Of particular concern is that decisions on policies tend to develop during a lengthy process of interdepartmental and public consultation, including parliamentary discussion: there is a risk that the lengthy procedures proposed in the draft Directive would have to be applied repeatedly during this process.

*Private Bills*

28. Following the Report of the Joint Committee on Private Bill Procedure in 1988 (HL paper 97, HC 625) amendments have been made to the Standing Orders relating to private business so as to require an environmental statement to be deposited with any private bill for a project which would require environmental assessment under the directive but for the specific exclusion relating to legislation.

29. As part of its review of private bill procedure the Government has announced proposals for changes in the way that railway, light rapid transport and harbour works are authorised. The intention is to establish new procedures so that such works proposals would be authorised by order rather than by private bill. These new procedures would incorporate arrangements for environmental assessment.

30. Private bills are for the benefit of a particular interest or benefit of an individual, public company or local authority—the promoter. They give powers which the ordinary law does not give them. They are not measures of public policy and are usually “local” in application. Interest in them will therefore usually be confined to those directly involved in or affected by them. It is therefore important that those who might be affected by the proposals (potential petitioners) have full information, including an environmental assessment, to enable them to consider the implications and to decide whether to petition against the bills.

*Possible application of environmental assessment to Public Bills*

31. The Clerk’s proposals for a select committee to consider the environmental effects of public bills needs to be considered against the background described above. A public bill will in general be just one stage in a sequence of policy development and implementation which needs to be environmentally aware throughout. In the case of Government bills, the development of the underlying policy should in future be increasingly aided by the use of the appraisal techniques set out in *Policy Appraisal and the Environment*. This, and other measures the Government has in hand, will in any case greatly improve the general run of information available to Parliament on the environmental impact of policies, plans, programmes and specific projects.

32. Since public bills are a matter of generally applicable public policy, they receive great publicity and are openly and widely discussed. All the different aspects of a bill, including its effect on the environment, can be brought out in debate, especially during the detailed committee stage. The Committee will therefore wish to consider what added value would be achieved by a select committee and procedures on the lines proposed, and what the cost of those procedures would be in terms of timetable and business management.

33. The Committee will also wish to take account of the claims of other aspects of policy for specific attention. Would highlighting a particular topic such as the environment be perceived as distorting consideration at the expense of other equally important aspects of legislation?

*Procedural considerations*

34. The proposals in the Clerk’s memorandum are more elaborate than the new Standing Orders for private bills which require only the deposit of an environmental statement or a direction by the appropriate Secretary of State that environmental assessment is not required. In effect, what is now proposed for public bills would be an additional stage in the legislative process. Although the procedure outlined in the memorandum is intended to improve rather than hold up the passage of a bill, the Government doubts that this would be the likely result.

35. The paper envisages a structure involving special assistants and advisers, the taking of oral and written evidence both from Government Departments and outside organisations. The Clerk’s idea that the Committee would confine itself to examining the facts seems unrealistic. It is bound to be drawn into questions of judgement—many important environmental facts are the subject of heated debate—and will want to make recommendations about the acceptability of the bill’s proposals. No mention is made of ministers giving evidence, but it is hard to dismiss the possibility that a Committee might press for this. Furthermore, the expressed preference for the report on environmental assessment to be made before the committee stage of a bill could have implications for the start of the committee stage and the Government’s management of the individual bill, with knock-on effects for the legislative programme as a whole.



12 November 1991]

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The suggestion that some environmental assessment reports might be delayed until the report stage of a bill would, in the Government's view, nullify the purpose of the proposal which is that the House should have been an explanation of the environmental background to the bill. To produce this after the main deliberative stage would serve little purpose.

36. The Government therefore considers that, against the general background of the drive to improve and extend environmental impact analysis across the whole range of policy formulation and execution, it is preferable that responsibility for giving an account of the environmental impact of legislation should remain with departments and ministers, rather than being allocated in a select committee process such as the one envisaged, which would in general only make material available at a late stage of parliamentary deliberation, and after the main stages of Commons consideration had been completed in the case of bills introduced in that House.

37. The Government doubts, as a matter of practice and procedure, whether it would be appropriate for any committee such as is proposed to undertake or commission work on a bill which has not been passed to the Lords by the Commons.

*Summary: select committee on environmental impact*

38. The environmental aspects of a bill will either be of sufficient importance for these to feature in the normal debate as the bill progresses through the House or they will be of no or minimal relevance. The Government is taking steps to improve the quality of environmental policy analysis and impact assessment across the board, and this will provide a greatly increased flow of information relating to policy, legislation and implementation. The additional value of a fixed procedure at a comparatively late stage in the consideration of most public bills is questionable. There are considerable procedural difficulties in what is proposed, and implications for the management and progress of bills through the House. While commending the importance of environmental assessment and impact analysis, the Government does not therefore see any particular value in the method of approach in the Clerk's memorandum.

### Examination of witness

THE RT HON KENNETH CLARKE, QC, a Member of the House of Commons, Secretary of State for Education and Science, called in and examined.

*Chairman*

279. Secretary of State, welcome. I would just like to say in welcoming you that it is a privilege to have the opportunity of taking evidence from you here this afternoon and not least since all of us know very well that you happen to be a particularly busy Minister. I believe I am right in thinking you have had some intimation of the general area of questioning which we would like to pursue with you. Is there anything you would like to say more generally by way of introduction?

(*Mr Clarke*) My Lords, I did not want to make a general introduction. I expressed some slight doubts about coming to give evidence because I did not think I was altogether competent to intervene in your Lordships' House on decisions about your Select Committees. I was tempted by the opportunity which rarely falls to a Minister of marking a Select Committee before which he has appeared out of ten and giving comments upon it, but I would expect views I gave on select committees to be regarded with some scepticism on that count. I ought to make it clear, I think, that I do appear giving my own personal views and not on behalf of the Government. I think you have the Lord Privy Seal following me who will speak more authoritatively. I ought also to reveal that so far as the other House is concerned, I have over the years never been the greatest enthusiast for the select committee system. I will admit that I am somewhat reactionary on House of Commons procedure in most of my views.

I have yet to be satisfied that the introduction of select committees has had all the impact upon the House of Commons that is claimed for it. That has coloured my views a bit about select committees in this House as well. Other than that, I will answer your questions. My personal experience of the select committees of this House is very restricted. I only ever appeared really on three occasions that I can recall on enquiries being carried out here, all before the same Committee, one involving the space programme, one involving medical research, and more recently one on the Science Budget. It was broadly the same Committee with broadly the same people on every occasion, but that is the full extent of my personal experience. Obviously I had some departmental briefings supplied to me about the experience of the Department on other issues.

280. Thank you very much indeed, Secretary of State. Again I forgot to mention in my welcoming introductory remarks that we are particularly grateful to you for coming because we knew you had some slight hesitation, although your colleague in another place, the Minister of State for Foreign Affairs, Mr Garel-Jones, did not seem to share these tender inhibitions.

A. I am always a very inhibited man.

281. Could I ask you this, hearing what you have had to say. The Select Committee on Science and Technology has now been running for some ten or eleven years and a number of members here—Lord Tordoff and Lord Kearton—have been members of

12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

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*Chairman Contd]*

it. It has been running for eleven years and has produced a large volume of reports and I was wondering whether you could indicate in general what your and your colleagues' views are on the usefulness of the role and the work of that Committee.

A. Well, the Committee has produced a large number of reports and it does gather a lot of attention within the science and research community. It often gets raised with me when I have discussions with people from the European science community, as I have over the years both in the DTI and now again in my present Department. I do regard it, I have to say, as part of the science lobby—that may be a very respectable and distinguished lobby—and a very large proportion of the output of the Select Committee is lobbying in line with some set thread of opinion inside the science world. I think that is true, in case I seem too disrespectful of the Select Committees of your House, very much of the Select Committees of the Commons as well. After a time you get used to the position they occupy: although in theory they scrutinise public expenditure and public policy, they very often largely see themselves as a platform for particular interests which they continually advocate. With two where I have been directly responsible for giving evidence, that is certainly the case in my personal opinion, with the greatest respect: on the question of space policy and similarly when I last faced them with regard to the Science Budget. Having begun with my major reservations, I usually think I am in front of a distinguished section of the science and research lobby, always advocating that we spend more on whatever it happens to be in their particular area. With the other one on medical research a lot of the same sort of thing occurred, but I did have an extremely interesting exchange with them and out of that came one positive proposal which I would give credit to the Select Committee for. They concentrated on research within the Health Service itself, they did make a recommendation that we should appoint a director of research. That was, certainly as far as I was concerned, the first time such a recommendation had been made. It was not instantly welcome to those who manage the Health Service or those in the Department who advise me on those matters, but, as it matured in the course of exchanges, it did emerge as an extremely sensible idea and I do not know (I am now out of date) with the appointment of Michael Peckham what has happened thereafter, but I think it has been an advantage to the National Health Service. Similarly I asked the Department to think of occasions when the Select Committee has changed things. They say that on marine science and technology in 1985 it produced a good report and many of the things now going on down at Southampton, where we are constructing the Southampton Centre for Deep Sea Oceanography, really stemmed from a debate set off by that report. Similarly when they looked at civil research and development in 1986 I remember being involved in instructions which followed the Lords report and the Lords report played a part in handling science issues and led to ACOST which came out of

that. That is a very partial selection. What I am saying is that on the occasions when I agreed with them they made very positive recommendations; they would no doubt have made positive contributions on the other occasions if the Government had not rejected the recommendations. But on the other two, space and the Science Budget, with the greatest respect the space report was in the hands of enthusiasts very much wanting us to go into a manned space programme, an extension of the European Space Agency projects and I believe—no doubt somewhat unfairly—events have proved that the Select Committee was wrong to advocate that, and those who have plunged into that space programme got into terrible difficulties, I think, in France, Germany and Italy, where it is now all up in the air and being considered again. Similarly the last time I appeared before the Committee on the Science Budget the whole point of the hearing was to lobby, it was a response to the last year's public spending settlement. That was declared to be the point of having Select Committee hearings. I appeared and gave evidence which was a fairly sterile exchange about whether or not our proportion of gross national produce was right and whether or not we had a real terms increase in spending. The final report appeared three days later and had, in my opinion, plainly been written before I ever appeared to give evidence by somebody using the Select Committee as an instrument of lobbying. That is a very long answer. No doubt you will wish me to take apart those various views. I have once more tried to give a somewhat extended reply, my overview of the experience of Select Committees over the years.

282. No, I think we welcome your candid views, Secretary of State. I noted what you had to say about certain areas about which I happen to have some direct knowledge, the appointment of the Director of Research and Development in the National Health Service, Professor Peckham, which as you rightly said directly stemmed from a report of the Committee. I noted too with a certain pleasure what you had to say about marine science, as I happen to be Chancellor of Southampton University where the National Centre for Deep Sea Oceanography is going to be established, thanks in large part to the support of the Government but stemming from a report of the Select Committee on Science and Technology. I think that is an example of what I would suggest is a very useful role which they play at times, covering areas of scientific activity which have tended to be rather fragmented and which they have brought together. By the same token, I would have thought what they have said on climate change and suggestions they have made on climatology and the research there, have also been useful. I noted too what you have said about ACOST, and that leads me to ask a question, and that is: would you not think it is true at least in part that one area where the Select Committee have had quite a considerable impact on government over the last ten years or so is on the question of the structure of science within government, be it ACOST or the strengthening of the post of chief scientist, the scientific component of the Cabinet Office, be it on the executive side with more



12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

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[Chairman *Contd*]

executive functions for the Advisory Board for the Research Councils and so on?

A. Yes, that is an analysis which had not occurred to me, but your own question produces some evidence for that. The distinction I tried to draw is between those occasions where they are introducing some pieces of policy either previously not properly examined or one which has been examined with a very clear conflict—and it is very difficult to see the way through on the one hand all those issues and on the other hand where all that has happened—and those where the Committee is joining in with some enthusiasm in support of some particular lobby in the public debate. I think all Select Committees of both Houses of Parliament do that. The first approach is infinitely preferable to the second, certainly preferable, and the second approach can easily be overdone. In searching for a proper structure within government on science and research and development policy, a proper relationship between government, academia, industry and so, it seems to me the Select Committee has had some input into that, I agree. How far the structure we have works wholly satisfactorily is a matter still, I think, open to some debate, but certainly what we have is an improvement on what we had before. Much of it has stemmed either directly from the Select Committee or debates which the Select Committee helped to set off. I agree with that. The difficulty is that nobody likes a structure which does not produce the results they want. The underlying difficulty, I think, in science, which is true of many other areas, is one has highly distinguished enthusiasts out there who are seeking a mandate for the pursuit of whatever they perceive they require in their own particular area of activity, and there is no way you can ever comfort people from academia or industry with any response that modifies their demands. It is self-evident too to those who give evidence to Select Committees or confront ministers that whatever they could conceivably do at the moment should be financed very quickly by the government. The question which no one will answer, and I do not think this Select Committee attempted to answer the last time it looked at the science budget, is not what you might do—because you can produce great lists of things which distinguished scientists in this country could do if we had the resources—but what you should not do and what you should defer and deciding what the priority is; what you can afford to do first, what is likely to produce benefits which are required from the science policy. I think science policy more than most other areas is where most people do not even ask why the government is financing anything, what the objectives are—and there are worthwhile objectives I have no doubt—usually people do not bother whether you are training manpower or expanding human knowledge or improving Britain's competitiveness, but they will call in aid any one of these arguments in support of particle physics, marine science, space or medical research or whatever it is they happen to be enthusiastic about. In all these reports I do not think the Select Committee has been much more successful in addressing this than have any other of the

interested groups in government over the last few years.

*Lord Pym*

283. Is it fair to say that the Secretary of State, while acknowledging in a few isolated instances that some benefit has emerged from these Committees, basically thinks it is a pretty good waste of time, certainly not worth the effort, that their reports are not really important either to him or his Department, and that we are on the wrong lines altogether? Would that be a fair summary of what the Secretary of State is really trying to tell us?

A. A bit strong but not far away! Most unusually for Lord Pym he is putting my conclusions in less diplomatic language than I am using! I think my officials have found value, I gather, but not often. I should not be indiscreet about my officials but most of my officials I suspect regard an appearance before a Select Committee with a certain amount of dread. They complain that the Commons Committees have had international science scrutinized three times in two years and nothing very much has come out of the scrutiny. In my personal direct experience, with the exception of the Director of Research and Development, I do not think much has come out of them.

284. Would it be remotely possible that this rather basic attitude towards a Committee, which may or may not be right, means that some of the suggestions which come out of the Committee and some of the ideas they promote tend automatically to get a negative response from the Department? Might it be possible that a more open-minded, more receptive mind, might detect in the reports and the enquiries they make some constructive and worthwhile contribution to the benefit of the nation than you are prepared to agree?

A. Yes, I think I can concede it is possible some things have been rejected where the Committee have been right and we have been wrong. We have been open-minded on some things. I harp on about the last time I appeared as if I was particularly wounded by it; I was not, it was all part of life's rich tapestry as far as I was concerned, but when you know when you appear what they are going to say, and they know what they are going to say, and you know what they are going to say, and they know you are going to take no notice of it, and you know you are going to take no notice of it, we might as well have had an exchange of letters in which they said, "We think the public spending round this year was not good enough and we wish to be seen in public saying so". That tends to reduce the amount of attention you are likely to pay the next time you are summoned to appear. It is when it seems to have a predictability about it that one is put off. I have to say again, in mitigation of my complaints, that there is at least one Commons Select Committee about which I was very much ruder than this one, of which I have had experience, where I used to have to go to their meetings and listen to what their latest opinion on their adviser was, and I took a much more detached view of that Committee than I have on the House of Lords Select Committee.

12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

[Continued]

*Lord Dormand of Easington*

285. I do not have a question because Lord Pym has asked it, but I will just say this if I may: I had intended to ask the Secretary of State for a short answer, and he has not given a short answer but he has wrapped it up beautifully, as he always does, and I think we know his answer. In all the remarks he has made, is he referring just to the Science and Technology Committee or is he referring to select committees in toto?

A. I began by saying I am a sceptic of select committees; not all of them, I have considerable respect for some. The Commons select committees tend to have enthusiasts on them and they get in the hands of lobbyists, and I do not think the Science Committee here is any worse on that than the Commons' one. There is one Commons Committee which is completely negative and therefore is heavily disregarded by most ministers to whom it gives advice. The select committees were set up, as I recall, as a process of control of public expenditure—that is fine. In that they are not effective at all. They are meant, after that, to be contributing to parliamentary scrutiny for the Government and administration, but they are more helpful when they take a new aspect of the problem and comment on something which is genuinely open to debate or needs deeper exploration, not when it is in the mainstream of party political controversy, which this one never is, or when you feel they are predictably going to put to you what outside interests would put to you on that particular subject.

Chairman: May I intervene briefly here, Secretary of State, because I think what you said about select committees being established primarily for the control of public expenditure may apply to the departmental Select Committees in another place, but I do not think that is, if I may say so with respect, a correct interpretation of the pedigree of this particular select committee or, indeed, our Select Committee on European Communities.

*Lord Kearton*

286. Perhaps I can disarm the Secretary of State by not saying I rather agree with what he said about space funding. I did sit on that particular sub-committee and when junior ministers came along to explain the Government's decision I was not too popular for agreeing with the Government. The very first committee I was on was concerned with occupational health and safety at the beginning of the 1980s and that did lead to major changes in the way the Government dealt with it—the Health and Safety Executive and so on, and new inspectors. I think that was quite an important committee. I had the privilege also of serving on the medical research one and I am very pleased that you took the action you did. It took some persuasion but at the end of the day you did the right thing. What you did not mention, I think, is the very recent enquiry into global warming. We had a very intensive enquiry into global warming and to a certain extent we debunked an awful lot of what you might call the alarm and tremendous anxieties which were being raised by

some of the scientists. It causes me a certain amount of amusement that the scientists who got Mrs Thatcher worked up about it and were convinced our Select Committee had got it wrong are now going round giving exactly the opposite advice from what they gave Mrs Thatcher. I think the definition of research and development is quite an important matter. The Report on the way in which research and development was described came to the very strong conclusion that government really tended to regard as research and development lots of items that were not really research and development at all and were therefore overstating the amount they spent on research and development. I hope that has had some effect on policy. One of the most recent reports was on Innovations in Manufacturing Industry. In correspondence with Mr Lilley, he has accepted about 90 percent hook, line and sinker and it is now Government policy. One only has to look back four or five years to the Aldington Committee report to see the change. The CBI put out a document the other day which quoted large chunks of that report. That is an example, I would say, of a Select Committee which has done things vitally important to the country, it has made positive recommendations which have received general acceptance. As I say, if something is agreed by the Government, the CBI and the Labour Party it cannot be entirely wrong. That would suggest, with respect, that the ministerial view was jaundiced and, I would say, very arrogant.

A. It probably is jaundiced and arrogant, Lord Kearton. I was reluctant to come here and give evidence. The global warming one I was not involved with. I followed the subject of global warming but was not even briefed on it for the predictable reason that it was not my department. It was presumably addressed to the Department of the Environment—I have forgotten, but I accept it made a contribution to that. Similarly on the latest one addressed to Peter Lilley I accept what you say. I do remember the one in which I think I did get involved about the Frascati definition of research and development. I remember giving evidence on the arcane nature of how we define research and development. I agree it is quite an interesting thing to discuss and I am sure it is quite valuable to get behind the otherwise apparent published figures on research and development. Having agreed to come here, I would merely give my comments on the three I recalled. My views may be arrogant but I found my appearance before the Space Committee—and you agreed with me—was, to use the terms which Lord Pym tried to put in my mouth, a complete waste of time because most of the members had merely regarded this as an opportunity to roast me in public for a decision which I knew perfectly well they profoundly disagreed with—there was no meeting of minds, we were completely apart. I will not go on yet again about the Science Budget one. It was a public relations exercise, in my opinion. On the other hand, the medical research one which Lord Kearton remembers I was delighted about; it was a wholly different type of enquiry. There I fairly conceded the opinion put forward in the report had not been put forward by anybody else; it did not get instant acceptance, it took ages to produce a reply,



12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

[Continued]

[Lord Kearton *Contd*]

the recommendations caused a great flurry of excitement inside the Department and the NHS and, in defence of my own tendency no doubt to be outspoken and arrogant, on this occasion I was persuaded that the Lords Committee was right about the need for a director of medical research. That is my full experience of the committees, but I know the two Commons ones. I have got quite a lot of unfavourable recollections along slightly different lines about subjects which Select Committees of the Commons have chosen.

*Chairman*

287. I have heard what you say and I personally welcome your frankness in expressing your opinion, whether or not we agree with it, and that is the point of asking a senior Minister to come and give evidence to us. It would seem to me—and I am now just stating my own personal prejudice—that, while I am not saying the Committee on Science and Technology as at present constituted is ideal, we have received a certain amount of evidence that it may be a little too inward-looking and inbred and that there could be advantage in their having some more generalists on that Committee. Again we have received some evidence that it may not be desirable that they should always embark on two reports every year. There is a case for shorter, sharper reports in certain cases and they have made some, for example, on the Nature Conservancy in addition to that on the Science Budget to which you have referred. But it would seem to me to be a great pity—maybe because I am more partial to the Select Committee approach than you are—if the very great expertise which there is in this House on scientific matters and, indeed science in relation to policy, because there are a lot of dedicated people who have given a great deal of time to this. That is my own personal prejudice. I think you will have seen the subjects they are contemplating for future enquiries and I would like to ask you whether either you or your colleagues would feel that there are some which pre-eminently would be useful if they could be examined by a responsible body in this House. Just picking up one or two at random, I see they are suggesting that one of the subjects they might look at is high school science—something very close to your Department's interests. Another which they have suggested is the enquiry into forensic science against the background of some very sad cases recently where the evidence based on forensic science has been entirely disproven in subsequent enquiries. Another, and I am picking these up really at random, and this is an area which you are very familiar with from many points of view not least from your experience in the Department of Industry, the civil applications of defence research and development. I pick those three up but I was wondering whether, against the background of your scepticism, there are specific areas where you would give priority to future enquiries?

A. I have seen your appendix—

288. Not my appendix.

A. I was going to duck out altogether of suggesting subjects. I hesitate to do so because,

firstly, I am sure I would get complaints from other my colleagues if I start recommending enquiries into areas of departments. I have no objection to an enquiry into high school science, but the other two are not even my departmental responsibilities, and I have no idea whether the Home Secretary would welcome an enquiry into forensic science, or whether the Defence Secretary would welcome an enquiry into the civil application of defence research, which I might have some views on myself. I also do not think, however else select committees operate, the Government should be stipulating the subject matter for them. One thing I would take up from your question is the need for generalists on them. By definition I am a generalist, and the Science Committee always groaned at the thought but it is usual for a Secretary of State. I have no scientific training and I therefore mainly preside over the choice of priorities on spending public money and also negotiating our part in international agreements, but other than that on scientific priorities I actually leave them to the research councils. I see my duty as to protect the research councils who advise the Government on scientific priorities from political lobbying in order to ensure that there is a good quality, objective scientific appraisal of priorities. A few generalists do help in that process. I said earlier that when one finds you are asked for an enormous amount of money for astronomy, particle physics, space, genetic engineering, medical research, all the things I have already touched upon, the generalist is as well placed as the scientist is. The public interest lies in choosing between these. Is it vitally important that we discover the sixth quark? Is it terribly important we produce genetically new forms of plant life? Has this country got a distinguished contribution to make to AIDS research? Or is the overall need to encourage new, young manpower in the universities and just getting more studentships and more people into research before they go on to careers in industry? Scientists, with great respect to scientists, like any other profession will never address those questions. Scientists, almost by definition, want to know where he or she is coming from before they give their opinion on priorities; they tend to think their own discipline is of the highest priority. So generalists are required, and fresh minds every now and again, to look at what it is the public think they are trying to do when they put money into this. To have the same membership all the time—and this seems disrespectful of the amazing expertise this House has—and every member of this Committee without exception knows more about science than I do, what you do not get out of it all is the objectivity which generalists might provide.

*Lord Kearton*

289. I agree with a lot of what the Secretary of State has said here. I personally think CERN is a waste of money, the sixth quark included, and I also think the money spent on fusion is a waste of money and have said so recently in one of the other Committees. But to say that all scientists are after big

12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

[Continued]

Lord Kearton *Contd*]

spending is wrong. The medical research committee was chaired by Lord Nelson, a generalist, and I was a member of that committee. Global warming was chaired by Field Marshal Carver, a generalist. The definition of R&D was chaired by Lord Carver, a generalist. Occupational health and safety was chaired by Lord Gregson, a generalist who did not even go to university. Innovation in manufacturing industry was chaired by Lord Caldecote, a generalist, and so on. So the idea that the Science Committee is full of a lot of lobbying scientists is a misconception on the Secretary of State's part.

A. I have already conceded the one which I am not critical of, the medical research one, was chaired by Lord Nelson and it had distinguished scientists on it. I simply have not had enough experience of enough reports by this Select Committee.

Lord Pym

290. I too am very much a member of the generalist club, because nobody can be further from science and technology than I am, and I know nothing about their lobbies, but I have always thought that the general area of science and technology is an area where British people have been extremely innovative and extremely successful and it is a national asset. I think as a matter of principle it is very sensible to invest strongly in success. We are not particularly good at carrying our inventions forward and making things out of them and exporting them, but almost every gain which has been invented came from here, and I think that is an asset. I think we should make sure we make the most of this particular characteristic which we have. I find it difficult to accept that the sole source of expertise on that could really be in the Department of Education and Science. Do you see any way in which Parliament can make a contribution in this area, whether it can be of any help to you, whether it can in any way enlarge the general effort in this area, because we are particularly good at it? I wonder whether you feel Parliament has got any role to play? Is there any other way in which the expertise which this House has could be harnessed for the benefit of the nation, which is really all it is about, and I wonder if you have any thoughts on that aspect?

A. I do not think the sole or principal source of expertise is in the Department of Education and Science. Ministers have to decide and governments have to take an overall view on the priorities in science, what they can afford and how it is divided between defence R&D and civil R&D and how much goes to scientific programmes applied to industry, and this is linked to how much is applied and how much is pure, how much goes through universities and through research councils. That is the role of government. The principal people who determine that, apart from ministers and the committee chaired by the Prime Minister, are the various research councils we have, which are comprised of scientific experts, and we have an overall ABRC which is the umbrella and the principal source of my advice on basic research, and that really divides up the money we get between the Science and Engineering

Research Council, the Agricultural and Food Research Council, the National Environment Research Council and the Economic and Social Research Council. That is an enormous body of expertise which has to spend most of its time saying no to most of the people who apply for funds, which we have given a real terms growth to and charged them with the responsibility of ensuring that goes to priority areas. Similarly we have ACOST and an industrial opinion as to how we should divide up our research spending. Therefore ministers and Parliament, to whom ministers are answerable, have to take a bit of an over-view and say what it is society in this country, UK Ltd, actually wants out of all those experts in dividing up the money. If Select Committees help to do that, that is fine. But I do not think that the new House of Commons Select Committee which is just about to be set up, the sub-committee of the Education Committee, or the Lords Committee, should however leap in in support of particular groups who have lost out in the bargaining, like space. I will invoke Lord Kearton, Lord Chairman, the next time I get lobbied on behalf of CERN and these particle physicists who tell me it is important we beat the Americans in the race to discover the sixth quark at a cost of millions, and save money. Select Committees are best when they address themselves to things which generally lend themselves to administrative judgment in this area, and these have been their most useful enquiries.

291. Do you regard the complaints and anxieties of all universities on the question of research as being special pleading, a case of "they would say that, wouldn't they", or do you think conceivably there might be something in that argument that there is a great deal of scope and opportunity which is not being used and possibly from a strategic point of view we ought to look again at the distribution of the finance for scientific research?

A. I am afraid, given obviously that I defend our present allocation of funds, most of it is special pleading and I think they are spectacularly distinguished people who therefore are very effective advocates. They are disciplined, they can literally blind with science a general public that does not have any objective means of appraising what they are doing, and they are driven on by highly desirable enthusiasms. You will find the scientific community in Germany, from where I have actually flown in at lunchtime, are beside themselves with rage at the starvation of science funding in Germany. I was addressed by a vice-chancellor in Japan with a vigour which I have seen no vice-chancellor in this country match about the starvation of science in that country. American journals are full of the death of American science because the Government does not put in enough. The French are always increasing their funding because they are totally hooked on a useless manned space programme which has taken them through the roof in science spending. I always modify my jaded opinions by trying to make sure we are not doing real damage in amongst this—because these are distinguished men—and ask is this country failing to provide adequate resources? In fact, the proportion of GNP we spend is roughly the same as



12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

[Continued]

[Lord Pym *Contd*]

that of Japan, of the States. Measured by output British science is hugely distinguished. We are one of the more successful scientific communities in the world. Our weakness is in application. With respect, I agree with Lord Pym in that we invent and other people exploit. That has been the failure of Britain over the years. In most special pleading one has to make a judgement of the correct amount of money that can seriously be afforded and also as to how far we are going to go for pure research to extend the bounds of human knowledge, how far we are going to go in that research which might be exploited commercially successfully in this country, and how far we are going to take objective viewpoints in the interests of mankind in general.

Lord Tordoff

292. Are you putting this Science and Technology Committee in the same category as the people you have been speaking of as being special pleaders all the time? I well remember your visit to the Select Committee on Space, of which I had the honour to be a very minor member, and I remember there was a certain conflict between us on that occasion—not between me and you, between the Committee and you. Do you see the Science and Technology Committee as just another group of lobbyists trying to get money for science?

A. On occasion I think it has been. On other occasions they have done quite serious studies. I think the Select Committee finds it impossible publicly very much to disown strong scientific interests outside. It never has urged restraint on the Government in support of any scientific activity I can recall. That is always a weakness of Select Committees. Why should they? It is not their responsibility to hold things back; they feel it unwise to do so. Lord Kearton is also as frank as I have been; he has the same views on some aspects of science as I have. When I appeared before the Science Budget Committee, Sir Peter Swinnerton-Dyer I discovered from the evidence addressed exactly the same question to the Select Committee—what would you not do, what choices would you make? I had to say the Select Committee, asked that question, declined to give an answer and did get hopelessly bogged down in arguments about the percentage of GNP which I tend to think in this area as in others has nothing to do with any objective valuation of what you are getting out of your public spending.

Lord Dormand of Easington

293. Lord Chairman, given the lack of enthusiasm for select committees of the type we have been discussing, I have to say to the Secretary of State I find it very refreshing indeed to have those honest opinions. Would he comment on the value—if he thinks they have a value—of *ad hoc* select committees? Obviously I think in terms of the Department of Education and Science because the range of matters which have to be discussed and investigated in the field of education and science is almost limitless. I hope he would agree that there are some topics which need a greater deal of

investigation and these would not be by a continuing Science and Technology Committee which this House has at the moment. It does seem to me, if I can put my own view very briefly in one sentence, that there is a place for an *ad hoc* investigation into something in the Secretary of State's field and, if I may repeat myself, I am setting it against his antipathy—if that is the right word—to select committees as they exist at the moment. I wonder if he might like to give his views on the suggestion I am making.

A. I see nothing wrong with an *ad hoc* committee—this is my personal opinion, as I said, throughout. If a committee like the Select Committee on Science and Technology in this House chooses an area where it genuinely wishes to explore evidence in greater depth and produces a considered report which furthers the debate, that can be very useful. The ones I have experience of—like global warming which Lord Kearton described, like health and safety at work—could well have fulfilled that remit. An *ad hoc* committee tends to be reacting to what was in last Sunday's newspapers. House of Commons Select Committees then tend to get into a predetermined position and rush into the controversy as quickly as possible in order to join in the act. The one I have very particularly in mind is the one on safety of food which followed an incident concerning my then junior minister and salmonella in eggs some time ago, where all the members of the Select Committee were trying to do was to get themselves into the newspapers, joining in getting their respective parts in this particular controversy. I personally do not regard that as very valuable, though I quite enjoyed my own appearance before it. It was good comedy stuff. I knew what the opinions of everybody round the table were, it was just displaying a general public argument. I really do not think I should otherwise give advice on what committees this House should have or what they should study. To say I have a general antipathy is too strong, it makes it sound as though I am antipathetic to select committee. To explain my general views, I still rather hold what I heard described the other day as the romantic Enoch Powell view of how Parliament ought to function. I tend to think that Parliament is at its most effective on the Floor of the House when passing legislation and Select Committees have never quite found a role in all that.

294. The Secretary of State only dealt very briefly with my particular point. I hope he would agree on reflection that this House perhaps more than the other would not react to last Sunday's newspapers because this is something we do not have to do, for good or bad. It is quite proper that those in the other House ought to take their constituents into consideration, I am not complaining about that having been one myself. But it seems to me the Secretary of State has not really answered the question, which I do not want to repeat. I wonder if he would like to say a couple of sentences. I know we are short of time.

A. I think Lord Dormand has made my point quite well. I would agree in this House it is less likely that people will plunge into an *ad hoc* enquiry in

12 November 1991]

THE RT HON KENNETH CLARKE, QC, MP

[Continued]

[Lord Dormand of Easington *Contd*]

response to last week's newspapers and they are less likely to pursue any party political point in setting up an *ad hoc* enquiry. I am very party political in the House of Commons, I am a parliamentarian, so I do not object to select committees doing what they do necessarily. I do think one needs to look at those select committees and appraise what they are actually about and not pretend that it is some objective enquiry after truth that a group of Members of Parliament come together to pursue the Government on about some topical issue. This House has more room for detached and discursive enquiries of that kind, I think, because of the expertise there is here. You have heard me going on about the same report several times now but space was an *ad hoc* enquiry set up to respond to a particular decision which the members of that Select Committee strongly objected to. I do not dispute their opinions, they might have been right and we might have been wrong, but it was solely to create the maximum furore about pulling out of HOTOL, Hermes and Ariane rockets. The spending on Hermes has just increased by 40 per cent, and it is no longer likely to achieve any of the things claimed of it, which is exactly what we had complained about and which the Germans and Italians are now desperately trying to get out of and only the French want to proceed with.

*Lord Tordoff*

295. I cannot let that pass, Chairman, because it is a distortion of what the Committee was doing and the results of that enquiry. A lot of the difficulties arose on that occasion, and the Secretary of State will perhaps remember, as a result of a contribution to an earlier debate by the Select Committee on the setting up of the space centre in this country. The Government had decided to go down that road and then the Minister decided that the amount of money available was to be reduced and in fact the Director of the space centre resigned just as we were starting our enquiry, so that certainly coloured the enquiry. But I think the Secretary of State will accept, will he not, that we never went over the top on HOTOL, that we agreed with him on Ariane, and that many of the more exotic space adventures the Committee did not come down in favour of. What we were trying to do was to find some focus for the money which was going to be spent. Does he not agree?

A. Not wholly. I do recall, upon reflection, and again I am speaking off the cuff because I have not looked it up, which is perhaps not a wise thing to do, the

Committee did not come out in support of HOTOL, it supported me on HOTOL, but other than that the immediate prior events had been meetings of the European Space Agency and decisions taken there and I remained personally convinced throughout that the general purpose of the enquiry was to raise the maximum amount of fuss about that and in particular the highly controversial decision we took not to take any part in Hermes.\*

Chairman] I hate in any way to cut short a discussion which I find very stimulating, but I have been told the Lord Privy Seal is here waiting to give evidence to us. Are there any other questions members of the Committee would like to make?

*Lord Thurlow*

296. The Secretary of State has referred to his view that on certain suitable subjects in depth enquiries by the Science and Technology Committee may be appropriate and useful. There is quite a bit of support for the idea which has been put to our Committee that we ought to have more short, sharp enquiries, which can be conducted in a comparatively short time, resulting in a comparatively short report which would be served up quickly. Have you any views as to whether there is something to be said for that sort of approach as a supplement to in-depth enquiries on certain subjects?

A. I am not sure I have a view whether short, sharp ones would be preferable to long ones. I do not think I do. The ones the Department give very high marks to are the ones on marine technology and medical research, which I have several times given high marks to and my personal opinion is that that was a good one. I think the answer lies in just looking at the questions which are to be addressed and how it is gone about. I hope I have not left the Lord Privy Seal to pour too much oil on troubled waters, but having been persuaded to come here and give my views I decided not to dissemble them.

Chairman] We are very glad you overcame your initial inhibitions about appearing before this star chamber. We would like to thank you for the very frank and refreshing and, at times, delicately challenging views which you have given us! Thank you very much.

\* Note—Following correspondence between the Secretary of State and both Lord Flowers and Lord Shackleton, the Secretary of State asked that an explanatory footnote be added to the minutes of evidence. This, together with the correspondence, is printed at pages 261 and 262.

### Examination of witness

THE RT HON LORD WADDINGTON, QC, a Member of the House, Lord Privy Seal and Leader of the House, examined.

*Chairman*

297. Lord Privy Seal, we would like to welcome you again and thank you for coming to give evidence to us. We would also like to thank you for the papers with which you have provided us. I know, like all your colleagues, you are a very busy man and I know you have been on the floor of the House until just now, so we are all the more grateful to you for coming before us.

(*Lord Waddington*) Thank you, my Lord Chairman.

298. You have produced a short paper on some of the matters which arose from the evidence you gave on 23rd July last. Would it be fair to summarise your undertaking about the Government's responses to the European Communities Committee's reports as follows: that we would normally expect a reply from the Government within two months, at the most



12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued]

[Chairman Contd]

three months, and that if a debate is held earlier than within two months, the Government would aim to reply a week before the debate? Is that a fair assessment?

A. That indeed is so, my Lord Chairman. The only thing I would add, which I think I indicated at that time, is that there could be circumstances where the recommendations of the Committee were wholly in accordance with the Government's view and it would not really be necessary to have any very formal reply.

299. Thank you very much. Could I therefore, having heard that, be very tiresome and say that I think some members of the Committee would be a little disappointed at three months because when your colleague the Minister of State at the Foreign Office, Mr Garel-Jones, was before us he said, "I certainly would not like to see replies to reports extending beyond two months."

A. Yes.

300. That is now stretching out to three months, and I was wondering whether that slippage is really necessary.

A. I think that is the result, my Lord Chairman, of our being very cautious and covering ourselves against the possibility that we miss the target. But we have certainly got the message that we should where possible get replies in within two months.

Chairman] Thank you very much indeed. The second question relates to the response to the Science and Technology Committee reports. Rather curiously, as you will have noted, the Chairman of that Committee, Lord Flowers, has stated that there has been on occasions a great advantage in there being no early response to their reports. For example—and I think this was the case with the one on medical research —

Lord Pym] May I interrupt, Lord Chairman? I think his point was that he did not want a response before a debate, which is a different thing, so the matter would be open for the debate in that particular case, as opposed to no early response. I think that is what he was saying.

*Chairman*

301. I think that is fair comment.

A. I am not sure whether it was a question, my Lord Chairman, of waiting for a debate. I think it was a question that he wanted to see a report on the changes made; some changes within the Committee we have which he wanted to see come to fruition. I will have to check on that, I am afraid.

302. Yes, I think it is true that he did stress the advantage of having a debate before the reply because he then went on to say that after the Government had given the formal reply then it is rather more difficult to shift them. The two Committees are of a very different nature so it is not, therefore, particularly surprising that they adopt a slightly different attitude towards this matter.

A. Yes, Lord Chairman.

303. Have any other members any questions on this aspect? Then could we turn, Lord Privy Seal, to your paper on legislative committees and in particular the possible proposal for Special Standing Committees on legislation. Again I should like to thank you for your paper and to ask if there are any general comments you would like to make before we turn to the specific matters on which we have questions for you?

A. It may help if I do make just one or two comments, my Lord Chairman. This was introduced on an experimental basis in the Commons in 1981 and, in fact, it is a procedure which has been used very rarely. It was used—I have the figures here—in the Session 1980–81 in three bills, in 1981–1982 for one, in 1983–84 for one, and has not been used since. So a big question does arise as to why with this procedure in place in the Commons it has not been used. I think the conclusion was reached that it would not be a very satisfactory procedure to use in the case of very controversial bills. I never had to deal with the situation when I was Chief Whip but one could envisage circumstances in which, given the limited amount of time which could be taken up in the giving of evidence, you could have the most difficult disputes as to what evidence should be called and, of course, in a very controversial bill with the parties wishing to perpetuate up in committee the conflict on the Floor of the House of Commons, you could well imagine that the witnesses who might be called might not actually be the witnesses who would throw the most light on the situation—they would be advocates of one side of the argument or the other. I imagine it was that sort of consideration which has led to this not being used very often, but there are actually one or two other matters which have occurred to me since I put in my paper. I wonder how easy it actually would be to select the Special Standing Committee. If the Special Standing Committee is going to hear evidence for a given period and then is going to go through the bill line by line, then all the arguments that come into play when one considers whether committee stages should be taken on the Floor of the House or upstairs come into play here. How does one select the committee? What representation is there on this committee for the cross-benchers? Because, of course, this place is so unlike the House of Commons it would be very difficult to envisage such a committee which was just composed on party lines with a fair share for the Government party, a fair share for the Labour Party and a fair share for the Liberal Democrats. What would happen to the cross-benchers who make such a contribution in this place? Then, of course, one is involved in all the arguments: would those peers who have been excluded from the committee really be happy about the limited amount of time there is for debate on report? Would they say, "As the committee stage has been taken upstairs we want twice as long for report"? Surely they would say that matters which had been taken to a division in committee should be capable of being debated again when the matter came back to the Floor of the House on the report, unlike the convention now when you do not have a division again on report on a matter which has been dealt with in committee. The more I

12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued]

Chairman *Contd*]

think about it, the more I have to think of this proposal in the light of all the arguments which have been advanced over the years against having Standing Committees upstairs.

304. Well, Lord Privy Seal, I hear very well and clearly what you are saying and I would only like to say this in reply: we have not yet begun to formulate a firm opinion on this particular proposal but, if I were to state a purely personal view, it is that, if this proposal were to run at all, it should run as an experiment confined, at least initially, to a bill which was of a technical nature, possibly of a legal, technical nature, which did not appear politically controversial. I have been fortified in my feeling that this is worth looking at by some of the evidence we have before us. Lord Zuckerman, for example, has deplored the fact that some of the technicalities of one particular bill (it happened to be the Human Fertilisation and Embryology Bill which I do not think was at all suitable for this treatment) were discussed in the House. We have Lord Colville saying in his evidence that there are sometimes legal bills (he quoted *Misrepresentation*) which are incomprehensible to almost everyone else; and only last week Lord Wilberforce made a very forceful intervention on the floor of the House where he was talking about the difficulty of getting time for legal bills and also seeing that legal bills are properly treated. I quote his words: "The House sits very late at night with perhaps 12 lawyers, or quasi-lawyers, on their different Benches discussing the clauses against the background of a number of gentlemen outside the Chamber waiting to be called in." If I were to express a personal preference, if we were to embark upon an experiment my preference would be for a bill starting in our House and a bill of a highly technical and perhaps legal nature and a bill which was, on the face of it, non-politically controversial. If that were the case, then it would seem to me there would be a great deal of expertise in this House which could be drawn upon and we would not be putting resources which are probably human resources, except on the clerks' side, under undue strain. I would then have thought that questions like the difficulty of the composition of the Committee would not be so acute.

A. May I ask, my Lord Chairman, if you have heard evidence from the Lord Chancellor?

305. No, we have not.

A. I do not think I am speaking out of turn when I say I have spoken to the Lord Chancellor about this matter. I think, with respect, law reform bills are a very good example of the bills which could be taken in this way. I gather from the Lord Chancellor that there is a great queue of proposals made by the Law Commission and they just stay in the queue because of the weight of work on the Floor of the House.

306. I think there are 39 outstanding according to Lord Wilberforce.

A. That is right. I would not dissent for one moment from what you said, my Lord Chairman if one were to go ahead with the experiments I cannot think of a better field in which to do it than in the field

of law reform measures because they are almost always entirely uncontroversial.

Chairman] I think I have stuck my personal neck out far enough.

*Lord Tordoff*

307. The Lord Privy Seal agrees, does he not, that the House of Lords is struggling to get through legislation in a reasonable time? The point Lord Wilberforce makes about people staying up late at night and the inability to call a division or test the feeling of the House is something which is not good—in my view, and I hope the Lord Privy Seal will agree—for the House itself. Would he perhaps go a little beyond legal bills? It seems to me there are a number of other bills which can fall into a technical category. I am a spokesman on transport, as he knows, and very often debates on transport issues boil down to four or five people on each side of the House; it may be a total of ten people who come and go as time goes by. Does he not think it might be possible in some way to, as it were, tease out the bill in a Standing Committee to a point where people on all sides of the House understand what each other's problems are? Should we not be looking for some sort of mechanism to assist that process?

A. I think, Lord Tordoff, it is certainly the case that this place is enormously different from the House of Commons. What has happened in the House of Commons is that people have said, "This Bill is so controversial it cannot go upstairs to a Special Standing Committee" or, "It is so uncontroversial there is no point in sending it to a Special Standing Committee because if we put it in the ordinary business of the day it will go through in two seconds". So perhaps we should not look at the experience of the Commons in saying that because they have not used it we can make no use of it here. That is why the suggestion put by Lord Jellicoe is appealing. I think it undoubtedly is the case that as soon as you begin to move into an area of controversy, you have to grapple with these problems, and the sensitivity of the House and how far they would really want to deny themselves a lot of time in debating the measure on the floor. Then we run into business management problems, because we do not want a bill to go up here from the Commons, languish in committee for a long time, then come back downstairs and for everybody to say that you have to consider over a reasonable space of time any conclusion reached by the committee, and then there has to be a long period of report, et cetera, et cetera. So there are business management problems as well as the sensitivities of the House once you move away from a narrow category of bills. However I certainly would not sit here and argue against experiments with the Special Standing Committees in a limited category of bills.

Chairman] I am very interested to hear what you say in that respect, Lord Privy Seal. I think it is true to say that, with certain quite distinguished exceptions, the responses to the questionnaire which we sent out were very much against referring public bills to Committees, though quite a few people who



12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued]

[Lord Tordoff *Contd*]

were against it said in an emergency it may be necessary. However, it does seem to me that the Special Standing Committee procedure is of a different kind because there is the possibility, if it follows roughly the Commons' precedent, of getting objective evidence beforehand which is useful in the latter stages of the bill, and I would think with technical bills, not necessarily only legal bills but certainly with legal bills, the House has very special expertise to bring to bear.

*Lord Dormand of Easington*

308. I am not entirely convinced about the need for them, but perhaps I might express it better by saying I am neutral at the moment. I wonder whether the Lord Privy Seal would agree that there are two things which might be tried? There might be some help on the question of non-controversy because I think that is a kind of dry-run where a principle might be established. Secondly, I do not really see any difficulty over composition. I really do not see any objection to giving the biggest number to the government of the day, whether the Labour Party or the Conservative Party, and then the second biggest, in present terms, would be from the main opposition party, and certainly the cross-benchers ought to be there and the other parties. I am expressing it rather badly but I do not see the same objection to the constitution of the committee from a party point of view, or non-party point of view, as the Lord Privy Seal does. I wonder if he would like to comment on both points, about giving it a dry-run (which incidentally I hope would not take very long because the converse is that it is giving more valuable time to the floor of the House, which is one of the objectives of the whole exercise) and about the constitution point?

A. I have not really thought the whole thing through, and obviously there would have to be negotiations through the usual channels to try and reach some accommodation as to the appropriate composition of the committee, and I am not saying for one moment we would necessarily have to have the rigid system that they have in the Commons, but I do not think a government of the day would particularly like, if the bill was at all controversial, to see it go upstairs and risk a whole series of defeats as a result of divisions on party-political grounds, because the government would then have to exhaust the House and use a lot of energy getting them all reversed when the bill eventually came back. So it comes back to this question of the category of bills which should be subjected to this sort of procedure.

309. I agree with a controversial bill the government of the day would not want to see it, whichever party is in power, but I made it quite specific that it would be the non-controversial kind of bill. I think the usual channels could cope with that problem, but the Lord Privy Seal was not quite sure about that?

A. Can I use the example again of a law reform Bill? I cannot see very much difficulty in our reaching an agreement where all sides of the House were represented on the committee. If you had that sort of

bill, I agree entirely with Lord Dormand, I think the difficulties over the composition disappear out of the window. It is just when the bill crosses that invisible line from being completely non-controversial to being a bit difficult and to being a potential embarrassment to the government.

*Chairman*

310. One follow-up question in that area: if, and I am begging the question slightly, there was going to be an experiment or experiments in our House on these lines, of trying out a Special Standing Committee procedure, how would you see the choice of bills being handled? We have had some discussion about this and there has been a suggestion that if we were to go along the lines of an experiment, perhaps bills from a certain department, for example the Department of the Environment, might be subjected to it. There have been other suggestions which I must confess I found attractive, that we should be more selective in order to try and achieve the object of fastening on bills which are highly technical and legal and non-controversial and a political, and therefore there should be some mechanism, perhaps the proposed Liaison Committee, which would recommend them or choose them. I do not know whether you would have a comment?

A. I find this question very difficult. I would have thought at the end of the day you have to rely on the usual channels with a nudge from you and a nudge from the prospective committee. If the opposition say, "You may think this is not controversial but we think it is very controversial", how on earth in those circumstances can you force the opposition of the day to lose the possibility of having a full debate on the floor of the House? So at the end of the day you cannot send the thing upstairs unless parties, though the usual channels, agree it is proper to go there.

*Lord Pym*

311. Apart from the question, as it were, about law reform bills coming up in the course of these exchanges, which is rather peripheral to the legislative programme, the paper of the Lord Privy Seal is, perhaps not altogether surprisingly, strongly negative. In his earlier paper he talked about the divergence between Select Committee work of this House and the main work on the Floor and certainly one way of correcting that imbalance would be to involve Select Committees in legislation. But there is no give in this paper in that direction. Then in paragraph 4 of your paper you say that you incline to the view that the Select Committee approach is the most useful one in scrutinising the general policy of administration etc., but in your original paper in paragraph 14 you are actually against any further additional sessional Select Committees. That is rather negative. Then you say that there is no evidence that the procedure for treating legislation is unsatisfactory although a month ago we had the Foreign Secretary, when talking about Parliament, saying that reform is needed. I personally believe in the detailed scrutiny of legislation and I just wonder whether you feel the procedure we follow now is

12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued]

*Lord Pym Contd]*

entirely satisfactory or whether you feel it could and should be improved from any point of view. Is there any constructive side to your thinking on this subject or do you really think we would be sensible to forget any change and simply go on as we are?

A. Lord Pym, I think actually the committee stage in the Lords works a lot better than the committee stage in the Commons. I suspect the Foreign Secretary was really directing his criticisms to the way in which the committee stage operates in the Commons. We all know perfectly well what happens in the Commons—a bill goes upstairs and is supposed to be examined line by line. In fact nothing of the sort happens. It is just an excuse to carry on the party political battle upstairs as it was carried on downstairs. Every excuse is made to deploy exactly the same arguments which have already been deployed in second reading. So I can understand people getting pretty frustrated with the way the system operates in the Commons. I do not think we do too badly in this place and there is a reasonable debate during the committee stage on detailed points of the bill. Lord Pym mentioned the question of what I said last time round. I think I said the Select Committees tended to become divorced from the main work of the House. That may or may not be wrong but that has no bearing on the present argument because there I was merely talking about the Select Committee on Science and Technology and the Select Committee on the European Communities, they being the only committees in existence, and I was talking about how their composition tended to remain constant, or very nearly constant. As a result of that, they are rather separated sometimes from the main work of the House. I do not really think our experience of these Committees has any bearing one way or another on the decision as to whether there should be anything analogous to a Select Committee system when it comes to the scrutinising of bills.

312. In paragraph 4 you express the view that Select Committees might in terms of legislation best be applied at the policy formulation stage which precedes legislation. It is my view that, because of technology and the pace of life and all the rest of it, bills are prepared much more quickly than they used to be, with much less outside consultation, much less time given to the preparation of them, and that lands up with regard to their part of the process with parliamentary draftsmen having to complete their work under pressure of time which they would never opt for. Is it actually practical, or do you think it might be possible, to involve this House at the policy formulation stage preceding legislation? Is there a practical way in which it can actually be done? It seems to me that is a stage in the sense which concerns the Government and it is only when it emerges with a view that Parliament becomes involved.

A. It is a very difficult question to answer, but the likelihood of the Government changing the basic policy after publication of a bill is pretty small. So even if you had a Select Committee system, it is highly unlikely that the Select Committee having come out with certain criticisms of the Government proposals would lead to the Government

withdrawing the legislation. So the only time people can actually influence the shape of the legislation to be presented to Parliament by the Government, and which the Government is then going to do its best to get through, is before the legislation actually comes forward. Take, for instance, the question of student loans: there was plenty of discussion long before a bill was brought forward on student loans, outside the House and inside the House, about the merits or demerits of that proposal. I think that probably what I was thinking of at the time that particular passage was put in my paper was that, if a Select Committee in this House had been discussing before the whole question of student support and whether there was adequate support for students or not and how more adequate support could be provided for students, then the Select Committee of this House could have brought out proposals which could really have had a very considerable influence on the formulation of legislation by the Government. I think perhaps I am being almost too frank—once the Government has actually committed itself to a particular type of legislation it is very hard to believe it is going to tear it all up, however wise are the members of the Select Committee who then begin to process the bill.

*Lord Tordoff*

313. I think, to follow that, in the case of the football supporters, had it had the scrutiny of this House before legislation was drafted there might have been a better bill at the end of it.

A. I take the point.

314. Can I follow through what you were just saying and refer to your paragraph 11? If I may paraphrase, I hope not unfairly, from the middle, you say even if additional or deeper scrutiny were to be considered, this could only be justified if it assisted the legislative process by providing relevant briefing or reports or, you then go on to say, by improving the quality of legislation eventually passed. Then you say, "Even then it would be unacceptable if this added to the overall time taken for the passage of a bill through the House ...." That does rather suggest it is better to have the bill through quickly than to have the quality of the bill at the highest level.

A. I would not like that impression to be reinforced by anything I say today, Lord Tordoff. It is certainly not what I meant to say. The Government obviously has to bear in mind the need to get legislation through over a reasonable timespan and that can never be far from our minds, but there are many other considerations to be borne in mind as well. I keep coming back to the question of whether in a revising chamber like this it is really right to say, "Well, the mass of peers must play a smaller role and a small committee is going to take over the job from them". That is really the consequence of having a Special Standing Committee or a Standing Committee on bills. Dealing with these matters on the Floor of the House with the broad mass of peers taking part actually does work fairly well, unlike, as I say, the Standing Committee procedure in the House of Commons.



12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued]

*Lord Thurlow*

315. In relation to the possibility of selecting suitable bills for this kind of treatment, if it were decided to have a shot, would the timing be such that it was possible by agreement with the usual channels to pick one or two bills after the Queen's Speech which are not going to come up for some time and throw them to a Select Committee, as it were? Would that be the kind of way one might proceed?

A. I think that is right, my Lord. I do not see how else you would do it. You would look at all the various proposals in the Government's programmes and try and find bills which are going to be introduced at some time during the programme which all those interested are very happy to see go upstairs. This is what happened in the Commons. The only thing that one has to bear in mind is how few bills finished upstairs in the Commons, but probably the answer to that is the one I have already given, and it would work differently in the Lords because they were more sensible.

*Lord Tordoff*

316. On the whole it would make sense to be thinking about bills which were actually going to start in the House of Lords rather than bills which had been to the Commons before?

A. Yes.

*Chairman*

317. I entirely accept what you say about sticking to our hallowed formula of taking bills broadly speaking on the floor of the House; however, would you not agree there could be instances, firstly, where the bill is extremely technical or legal where some Special Standing Committee procedure could be useful, and secondly, it would be useful in order to lighten the burden on the time of the House? Because, as the Clerk of the Parliaments is never tired of repeating to us, we are the second hardest worked House of Parliament in the world, or at least in those parts of the world which are members of the IPU.

A. I must answer that question with a yes, my Lord Chairman.

*Lord Kearton*

318. I agree with the Chairman, I think the case for taking bills upstairs is very limited. It has been suggested to us the Charities Bill and the Offshore Safety Bill would be suitable to go upstairs. I am not sure this is totally within our terms of reference, but the Chamber of the House suffers from one enormous weakness, and that is that ministers replying for the government have no authority to say anything for the government. So even if points are accepted the minister has to say, "I will have to take that back." So procedures tend to get drawn out because government speakers at the committee stage, with very rare exceptions, seem to have no authority whatsoever to reply to the points made at the time.

A. I think this was raised before, and I think my answer before was that this is a consequence of our

having a bicameral legislature with only a limited number of ministers in the Lords, with those ministers who are in the Lords very rarely being heads of their departments, playing a very lowly role, and very often the people who are answering in the debates are whips who are not even attached to departments because there are not enough ministers in the Lords to have a Lords' minister in every department. There is no real solution to the problem there. You are not going to get Cabinet Ministers or senior ministers always replying to debates in the Lords because they are not in the Lords.

319. I accept that, but it would seem to me an experiment might be tried in which more authority was delegated to people who are speaking in the Lords.

A. I think that ought to be borne in mind very much, Lord Kearton. It is pretty pointless, I agree, and very frustrating and aggravating for peers if people are forever getting up and saying, "I cannot answer that question", and really it is a question of the competence of ministers and good briefing of ministers, and whether enough attention is paid in Parliament to the work done in the House of Lords. I often feel our ministers do not get as good a briefing as do ministers in the Commons, and Lords are left to the end of the queue.

*Chairman*

320. I do not know whether any members of the Committee have any other questions on the proposal for special standing committees? Thank you for your answers, Lord Privy Seal. Turning to the Rippon proposal, as those of us who have read the relevant debates know, it did attract very considerable support from those Lords who spoke. I wonder again whether you would like to make any general comments? We have not yet taken evidence from Lord Rippon personally, but we will next week.

A. I have not been to Australia, and the only thing one would like to know more about is how effective is their ordinary committee procedure. I have heard it said, and I do not know whether it is true or not, that the party caucuses are pretty effective in restricting debate during the ordinary committee stage of the bill, and so therefore the Scrutiny of Bills Committee in Australia is far more influential than it might be in this country. That is the only thing I am worried about. I am not really sure what the Australian experience has to teach us.

321. We are very much in the same position at the present time, Lord Privy Seal. We are thinking of sending a pigeon or two, if that is the right word for a distinguished peer, out to the Antipodes to have a look at what happens in practice, if that can be arranged. That said, could I ask you that if an experiment were to be tried along these lines, how wide you feel that the terms of reference of any such committee should be? You have seen Senator Crowley's paper—page 141 of the annex—in which the terms of reference and the Standing Order under which the Australian Committee operates are given. It would seem to me, and here I am expressing a

12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued

*Chairman Contd]*

purely personal view that the first three areas which it looks at go pretty wide. May I quote them? It says that the Committee looks at whether bills “(i) trespass unduly on personal rights and liberties; (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers; (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; (iv) inappropriately delegate legislative power, or (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.” Again speaking without precise knowledge on the subject of how this works in Australia, I would like to ask your views as to whether you feel that (iv) and (v) would be entirely appropriate terms of reference for a committee of this kind if it were set up as an experiment, or whether you feel its terms of reference could legitimately go wider?

A. I am bound to say, my Lord Chairman, that I think it would be very difficult to envisage a committee which had as wide terms of reference as the Australian Committee. I really agree with you that if one was to go down this road, the sort of matters covered in (iv) and (v) would be the sort of matters which Lord Rippon would have in mind.

Chairman] Speaking as a non-expert, it would seem that (iv) and (v) would cover what Lord Rippon had in mind. I think, Lord Pym, at a previous meeting you said you thought it would be spot on in that respect?

Lord Pym] Yes.

Lord Tordoff] I am not sure that item (i) might not be something which one would be pressing for, particularly when we have no Bill of Rights in this country.

*Lord Pym*

322. Well, that is speculative. Do you not attach weight to the arguments which have been made by extremely experienced members of this House, not only ex-Cabinet Ministers such as Lord Rippon, but law lords and others, that there is something here which does not seem quite right at the moment, and some sort of discussion in a select committee on the proposed powers to be taken is really something we ought to try and do? Do you feel those arguments which have been put forward carry weight or are you seeking to dismiss them?

A. I am not seeking to dismiss this proposal, Lord Pym. I do not think you can just say, “Well, we will set up a committee and then let the committee decide what sort of matters are on-side and what sort of matters are off-side.” There would have to be the most detailed study and discussion as to what should be the limits of delegated legislation, and then the job of the committee would be to see that one always did stay within limits and not outside them. But, subject to that, I think that this proposal by Lord Rippon is well worthy of consideration.

*Chairman*

323. I see you say in paragraph 17 of your memorandum, Lord Privy Seal, that before establishing a Select Committee for this purpose the

Committee may think it necessary to explore in consultation with the Commons how far it might be possible to reach consensus on terms of reference?

A. This is really what I meant in my last few remarks, Lord Chairman.

*Lord Kearton*

324. I am encouraged by the Lord Privy Seal's answer. It is more positive, if I may say so, than appeared from the paper.

A. I did not mean to be that positive! I was impressed with what Lord Tordoff had to say.

*Chairman*

325. Would you feel therefore, again in that context, that it would be possible if the Committee were appointed for them to establish themselves a consensus, perhaps after contact with the Commons, on the proper and improper use of these powers for an experimental period?

A. I would have thought not, my Lord Chairman. It seems very odd to set up a committee and then give the committee itself the job of deciding what job it should do. Surely the House has to decide whether a particular committee should be set up and what job that committee should do. That really does involve us in deciding what is on limits and what is off limits and we have to bear in mind the whole time that there is going to be a difficulty of distinguishing vigilance against unwarranted use of powers from opposition to underlying policies. So you would have to spell out very, very clearly what was the job that committee had to do.

326. I think we would all accept that. Are there other questions on the written proposal which members of the Committee would like to ask the Lord Privy Seal? Is there anything you would like to add?

A. I do not think so, thank you, my Lord Chairman.

327. Could we turn to the question of environmental assessment? Again we have read what you had to say on that and I do not know whether there is anything again in general you would like to say by way of preface.

A. May I catch up? We have been having consultation within government about this. I think the difficulty is really this: take the House of Commons, you cannot put in the explanatory memorandum anything of an argumentative nature so the first thing that you would have to do would be to get the clearance of the House authorities for what you actually wanted to put in the explanatory memorandum. You would obviously also have to have agreement through the usual channels because you could not start a bill off on its passage when the other parties did not even agree that you had put something in the explanatory memorandum which was properly in order and not something which was just an argument in favour of the bill. That is a very, very difficult matter. I wonder whether one would be able to express in one or two sentences any useful



12 November 1991]

THE RT HON THE LORD WADDINGTON, QC

[Continued]

[Chairman *Contd*]

statement of facts about the environmental consequences of the bill. That seems to be a difficulty.

Lord Pym] Could one attach it in a separate document, not part of the explanatory memorandum but something that accompanies the bill?

*Lord Tordoff*

328. Like notes on clauses.

A. Well, I suppose one could. I did not realise that was being put forward by this Committee.

*Lord Pym*

329. It has not been.

A. I would like to think about that, Lord Pym. It is something we have never done before. Again you would have to consider whether you could do it concisely enough for it to be useful.

*Chairman*

330. I think, Lord Privy Seal, it is fair to say—again I speak subject to correction by members of the Committee—that it is not our inclination at the present time to recommend, as it were, fullscale Select Committee treatment of the environmental aspect of bills. We felt that the House would have its hands full by way of experiment if we were to recommend, and they to agree, that there should be an experiment or experiments on the Special Standing Committee on legislation and on the Rippon proposal. We did envisage other difficulties too, but we did feel it would help Lords' consideration of bills and indeed, Parliament's consideration of bills—which had an environmental impact if there could be either on the face of the bill in some way or, as has now been suggested, in something like notes on clauses, some assessment by the Government of the environmental impact.

A. I would have to take that back to colleagues, my Lord Chairman. I was really considering when preparing for this meeting the question of it going into the explanatory memorandum, but I will certainly take that back. Perhaps I could write to the Committee.

Chairman] Delighted.

*Lord Pym*

331. Take your paragraph 36, where you say it is better that this assessment should stay with the department: we would like to know how we can reach some method of informing the House what the departmental assessment in relation to a particular bill is. That is what we want to see.

A. I will take up that point.

*Chairman*

332. Lord Privy Seal, there are just a couple of things I would like to mention and ask you about. You asked whether we had taken evidence from the Lord Chancellor on the question of legal bills and the blockage. We have not. What would your counsel be, that we should? I am worried about our timetable and he is a busy man too. Would you suggest we should take evidence from him in that area or should we do that, as it were, by the written approach?

A. If I may say so, my Lord Chairman, I think I should invite you to accept from me that the Lord Chancellor does feel that we are in a difficulty at the present time so far as law reform measures are concerned. He is embarrassed by the great queue of recommendations of the Law Commission and he would say that, if those technical bills could be processed quickly by a new procedure, it would be a great advance and he would probably go on to say (though I doubt whether he has addressed the specific proposal) that a speedy way of processing those bills would be by sending them upstairs and subjecting them to treatment by a Special Standing Committee.

333. Thank you very much for that advice, Lord Privy Seal. The other matter which I just wanted to mention for the record, since your very useful memorandum was commenting, and rightly so, on three memoranda prepared by the Clerk of the Parliaments, was that these did not flow from the Clerk uninitiated but were in response to a request which we had put to him on these three issues.

A. I am sorry. The wording rather gave the impression that they came from the initiative of the Clerk of the Parliaments, but I understand full well that was not the case.

334. We bear the blame for that. That said, once again you have placed us very much in your debt. We are very grateful to you for finding the time to come, we are very grateful to you for the memorandum and we are very grateful for the explanations and answers you have given us.

A. Thank you very much. I am sure we are all very grateful to this Committee for the work it is doing.

MONDAY 18 NOVEMBER 1991

Present:

Boston of Faversham, L	Pym, L
Dormand of Easington, L	Thurlow, L
Jellicoe, E (Chairman)	Tordoff, L
Kearton, L	
	Shackleton, L

**Response to the Committee's Questionnaire  
by the Rt Hon Lord Cledwyn of Penrhos, CH, Leader of the Opposition, House of Lords**

There is no doubt that the Committees on Science and Technology and the European Communities have performed very important work since they were set up. Their Reports are appreciated both here and in the European Community.

The other reports produced by *ad hoc* committees are also regarded as valuable. We should therefore assume that the first two Committees should continue to operate and that the possibility of extending the work of *ad hoc* committees should be given careful thought. As members of the Committee will be aware, the problem here is the lack of resources and staff.

The use of Committees to consider public legislation off the floor of the House has been the subject of discussion for a long time. It appears to be an attractive proposition but on the occasions when it has been put into practice, it has foundered in a sea of difficulties. The Committee will recall that the last Bill to be so referred was the Pilotage Bill and I have read the note on this particular Committee by Lord Aberdare dated 11 February 1988. Paragraph 26 of the Public Bill Committee's report concluded that the experiment with the Pilotage Bill was unsuccessful and proceeds to give its reasons.

I recall at the time that the Pilotage Bill was carefully chosen for the experiment because it was regarded as non-controversial, the view being taken that it would be imprudent for controversial Bills to be taken in Committee off the floor. If this were to be made a criterion, I see very few Bills qualifying.

As I have said above, I think the European Communities Committee is most valuable and as a former member and Chairman of a Sub-Committee, I think the system works well. I would go so far as to say that it would claim to be one of the most important Committees in both Houses.

Cledwyn of Penrhos

25 June 1991

**Examination of witness**

THE RT HON LORD CLEDWYN OF PENRHOS, CH, a Member of the House and Leader of the Opposition, House of Lords, examined.

*Chairman*

335. On behalf of the Committee I would like to welcome Lord Cledwyn to our meeting this afternoon. He has had long ministerial experience which he can bring to bear in our deliberations. He has been Leader of the Opposition for nine years. Relevant too is the fact that for two years from 1982 he was Chairman of Sub-Committee D of the European Communities Committee. That had great relevance bearing in mind his past experience as Secretary of State for Agriculture. Allied to that, he has great experience and a feel for the curious body we call the House of Lords. We have read Lord Cledwyn's reply to our questionnaire, and I am sure he has read some of the evidence given to this Committee. Are there any general views Lord Cledwyn would like to make about our select committee structure, in particular whether there is any comment he cares to make about a criticism or anxiety expressed fairly widely, not least in the evidence of the Leader of the House, about the dichotomy between the work on the Floor of the House and the work done in select committees?

A. First, I am most grateful for your welcome. Perhaps I may begin by making a general comment. I think we must be very careful to avoid creating more committees which would not in practice make the legislative process in this House more effective. I know the Committee have heard authoritative advice on, for example, the proposal for a special standing committee. I understand some witnesses were more enthusiastic than others about that suggestion. As the Committee knows, there are two categories of Public Bill to consider. The first is the so-called non-controversial Bill which particularly in recent years has initiated in this House. Personally, I very much like receiving non-controversial Bills early in the session. I think we process them and scrutinise them very effectively. A good current example is the Charities Bill which will have its Second Reading here very shortly. The range of charities which will have an interest in that Bill means that, if called upon, there would be a long queue of potential witnesses to give evidence on the Bill. Is there a case for a special standing committee between the Second Reading and the Committee Stage of the Bill? That is



18 November 1991]

THE RT HON THE LORD CLEDWYN OF PENRHOS, CH

[Continued

[Chairman *Contd*]

something I have been pondering over the past two days. On balance, I tend to think not for the following reasons. First, it would lengthen the process, and we can assume that there will be extensive briefing of peers by charities and other interested bodies in due course. I suppose there could be the occasional Bill that is so complex that oral evidence by experts would be desirable in order to brief peers properly. The only Bill which seems to me to have come within that category in recent years—and this is within the memory of every noble Lord on the Committee—is the Human Fertilisation and Embryology Bill. Even in that case I am not strongly persuaded that it should have been sent to a special standing committee. I was deeply impressed by the way the House debated that Bill. I do not think I have heard more impressive debates than those on Second Reading and on the later stages of that Bill. Therefore, I am not convinced that a special standing committee could have improved the process. The second category of Bill is the one that is controversial, by which I mean party-politically controversial, and which always starts its journey in the House of Commons. This House has shown it can cope very well with those controversial Bills when they arrive from another place. They do however take up a great deal of time on the floor of the House and place a very heavy burden on a comparatively small number of peers on both sides. The reasons for that are well known to the Committee. We also know that the use of the guillotine in the Commons increases our responsibilities and our work as a revising chamber. We know that it was to lighten their burden on the floor of the House that the House of Commons decided to send Bills to Standing Committees upstairs. I recall that when I arrived in the House of Commons the committee stages of important Bills including the Finance Bill were still taken on the floor. Later it was decided to refer part of the Finance Bill upstairs to standing committee, and in a matter of a few years, the whole Bill went upstairs. Had the Commons not taken that particular step their position today would be impossible. It is the controversial Government Bills which give us most of our work and also most of the responsibility on the floor of the House. There may be a case for sending those controversial Bills to a public bill committee, but there are also powerful reasons why such a proposal would be impracticable. I suppose the most important consideration is the composition of this House. The Government of the day are entitled to expect that a standing committee will have its majority from their side. If one begins to think of appointing a committee in this House to deal with an important but controversial Bill one immediately realises that, as things are, it poses insoluble problems. I should like to turn briefly to one experiment of recent years: namely the Pilotage Bill. We know that six of our colleagues were in favour of repeating the experiment but that five were against. On reflection, I do not think there is justification for saying that that experiment was a total failure. I believe, however, that that experimental committee was held at the wrong time, in the wrong place and on a Bill which turned out to

be very controversial, albeit outside the political arena. It was the pilots who steered that committee onto the rocks. I think we should try again but with much more preliminary thought.

Chairman] Thank you very much for those opening remarks. Perhaps I should mention that we have the benefit of the presence of a distinguished Member of the House, though not a member of the Committee. I refer to Lord Shackleton who has joined our deliberations today.

*Lord Tordoff*

336. Referring back to the Pilotage Bill, it has been said on several occasions that the best sort of Bill is the one having a lot of technical detail which is best teased out in committee rather than on the floor of the House. Yet it sounds from what Lord Cledwyn says that it is precisely that sort of Bill where the experts might railroad it and drive it off course, just as the pilots drove the Pilotage Bill onto the rocks. Does Lord Cledwyn think that would be true of almost any technical Bill?

A. The House would have the alternative of sending it to a specialist standing committee or a public bill committee. If Lord Tordoff is referring to a complex Bill the House will need to consider whether or not to send it to a special standing committee. In the case of the Pilotage Bill, I do not believe that that was a technical, scientific or highly complicated Bill calling for special treatment and that a public bill committee was the appropriate place in which to examine it. But the knowledge that pilots as a profession would oppose the Bill with the intensity they did was not apparently known when the House made the reference to the committee. Furthermore, to hold the hearings on that Bill in the afternoon in the Moses Room when the House was in Session and when there was conflict between divisions in the committee and divisions in the House was a mistake.

*Lord Pym*

337. There are two arguments for considering whether select committees or committees in some form could assist in the legislative programme. One is to save the time of the House. If it is as difficult as you indicate to find Bills which would be appropriate for such treatment, it would be so much on the periphery that whether or not we had one or two Bills occasionally which had that treatment would not really make any difference to the main work of the House. The other argument is the view often expressed that there is a division between the work of this House on the floor and its work in committee. There are separate departments, as it were. There are debates when reports of the Science and Technology Committee or the European Communities Committee come up, but that is all the linkage there is. The view that has been expressed is that if in some way we could involve the committee in the legislative process it would contribute to ending that difference. Do you think there is any validity in the argument that there is a difference, and does it matter? The committee work is different in character and is

[Lord Pym *Contd*]

designed for a purpose different from the work undertaken on the floor of the House. If it is seen as separate, does it really matter?

A. I do not think it matters that it may be seen as separate. My chief concern is that, first, the work performed by that committee would be valuable to the House in its subsequent consideration of the Bill, or that the Bill was so complex that it would help the House later in committee if it was able to receive evidence of some kind from experts.

338. But it would still apply only to a few Bills?

A. Yes, very few. The unfortunate thing is that we in the House cannot contemplate referring controversial Bills to a committee, which is what would save the time of the House.

*Chairman*

339. I think there is a general feeling based on all the evidence received that, be it a matter of going down the public bill committee route or experimenting with the special standing committee route, those proposals would not be suitable for a highly controversial Bill?

A. I accept that.

340. In that context, I was wondering why you appear to have a preference for the public bill committee route—perhaps I am misinterpreting you—rather than the special standing committee route. The evidence we have received on the whole, though with some notable exceptions, has been against trying the public bill committee route, instancing the Pilotage Bill to which you have referred. The evidence has not been overwhelming but we have received a strong indication that such a course would not be favoured. I have found it difficult to clear my mind as to where the advantage would be in the public bill committee route as opposed to the special standing committee route on Bills which are complicated and legal. It would seem at least to me that a special standing committee, which has power to take evidence, would be more likely to dig up something beforehand which would be of general use to the House when the Bill came before it at committee or report stage. One might take the committee stage proper in the special standing committee?

A. I tend to favour the public bill route, first because I am used to it and, secondly, because it would not waste time, whereas a special committee would tend to be time-wasting unless it had a crucially important job to do. The public bill route would take the place of the committee on the Floor of the House. Therefore, the public bill route would lead straight to Report Stage, as it does in the other place. I want to avoid time-wasting, and in the papers I have read there are suggestions which in my view could lead to a lot of time-wasting and to unnecessary committee work.

341. I quite understand that. We have received evidence from more than one quarter pointing out the fact that of all the legislatures which are involved with the IPU we happen to be the second busiest in the world, the busiest being the House of Commons.

Therefore, one does not wish to see anything which would tend to perpetuate time-wasting. To pick up what you have said, speaking subject to correction by you or other Members of the Committee, it would not seem to me that a special standing committee procedure which made allowance for a committee stage, like a public bill committee but with the possibility of taking evidence beforehand, would necessarily incur the penalty of wasting time. You would have the committee stage in the special standing committee?

A. That means you would be combining public bill committee work with the work of a special standing committee.

342. It would be following the precedent of a special standing committee.

A. The Commons did try it out about 10 years ago.

343. They have had five or six experiments?

A. They did not pursue it. I am not sure that there were strong arguments for not pursuing it at the time.

344. We heard evidence from Sir Peter Emery that the Procedure Committee were strongly in favour of it although the usual channels felt that it might make it a little more difficult to get government legislation through.

A. But if you are suggesting that the committee stage should take place in a public bill committee which would also perform the task of a special standing committee, that is a practical proposal which would need to be looked at very carefully. To combine the work of both a committee examining a Bill clause by clause and word by word, and also hearing evidence would be complex and might lead to difficulty.

*Lord Thurlow*

345. Does Lord Cledwyn have a particular view on the question raised by Lord Wilberforce in the debate on the Address the other day that if a committee procedure were applied to legal Bills hatched in the Law Commission it would enable a significant number of legal Bills which never have a chance of getting onto the statute book to be processed?

A. I listened to Lord Wilberforce's speech with great respect and found myself in sympathy with the case he was making. We are in a special position in this House to scrutinise legal Bills because we have the advantage of having the greatest legal experts as Members.

346. I suppose it could be contended that that would not, strictly speaking, be saving the time of the House because the House would not otherwise be considering the Bills?

A. Not all lawyers are verbose!

*Lord Boston of Faversham*

347. From what Lord Cledwyn said, I was wondering whether he regards it as an essential criterion of any of the proposals about which we



18 November 1991]

THE RT HON THE LORD CLEDWYN OF PENRHOS, CH

[Continued]

[Lord Boston of Faversham *Contd*]

might make a recommendation that the time spent on the floor of the House should be saved and whether that is so notwithstanding any other attributes the proposals might have, or whether he would feel that in certain circumstances that criterion might be outweighed by other commendable attributes in support of some of the proposals?

A. First, I should like to think that if we are setting up special committees to deal with legislation we are in fact saving the time of the House. Secondly, I concede that where the Bills are by their nature of such complexity that specialisation is required to understand them there would be a case for a special standing committee to examine them in detail.

#### Chairman

348. In a moment we will be asking you to comment on the work of our two existing select committees: the European Communities and the Science and Technology Committees. Before that, I would very much like to ask whether you feel it would be a good thing if we could free up peer and clerk resources and man a further sessional select committee of the House. It has been suggested we should have one on economic affairs, on social affairs and on foreign affairs. The counter-suggestion which has been made is that that would impinge on the work of the Other Place in the form of its departmental select committees. I think a great deal of the evidence we have received has favoured the ability of the House to create at least one *ad hoc* select committee during a session. Would you have any preference as between the two? What do you feel it would mean as far as the resources of the House are concerned?

A. I think a strong case can be made for a third permanent select committee, although one would have to be satisfied that it dealt with a subject which would justify its permanence; otherwise, an *ad hoc* committee would be preferable. For example, I have received representations from the Association of County Councils, of which I am a Vice-President in which they propose a committee to keep central/local relations under review. That is a subject of very considerable importance at this time. That might be a subject to justify a permanent select committee and I would be prepared to support it. As far as *ad hoc* committees are concerned, one would need to consider the subjects as they arose and make sure they were really important and not just a bee in somebody's bonnet. The difficulty here is the availability of money and manpower. I have suggested subjects in the past and been told they would be considered, but in the event nothing materialised because the money was not available. This is one of the main problems with which the committee will have to grapple. Foreign and Commonwealth affairs have been mentioned as a possible subject. Personally, I would not favour such a committee. We have enough external affairs on our plate with the European Communities Committee. There are 14 departments each of which is examined as to policy, expenditure and administration by select committee in the House of Commons. The one thing

this committee will wish to do is ensure there is no overlap between the work of committees here and those of the House of Commons.

#### Lord Dormand of Easington

349. I have a certain sympathy with the comment about the foreign affairs committee. I was impressed by the paper from Professor Grant. I put it to Lord Cledwyn that the field of foreign affairs is so huge it is simply not possible for one committee to deal with the increased number of major issues which are taking place in the world at the moment. If the argument about duplication is being put forward, I suggest it could be easily dealt with by the Chairman of the Lords Committee and the Chairman of the Commons Committee considering at the beginning of a session what their work would be to avoid duplication. Going back to Lord Cledwyn's remark that we have sufficient on our plate with the European Committee, with great respect that is an argument for having a select committee on foreign affairs. I absolutely agree with the point about the time required to consider EC affairs, and given the current political talk that time will increase. Therefore, we will continue to have a specialist committee dealing with the EC and the rest of the world will need to be examined. Would Lord Cledwyn think there is any substance in what I have said?

A. Lord Dormand has made out a good case for a FCO committee but I have read the reports of the committees in Another Place and the evidence of civil servants and Ministers from the Foreign and Commonwealth Office. If I may say so, they are fairly comprehensive. I am not sure how in practice this House could detach a subject and say, "We will deal with it in a committee here". What would you detach—the problems of Southern Africa or perhaps East Timor? I am not sure how it would work in practice as they are covered in the Commons. I think a proposal has been made for a steering committee which would look at proposals for *ad hoc* hearings. I am attracted to the proposition that there should be a small committee composed of perhaps three or four people. One of their objectives would be to ensure there was no serious overlap. For obvious reasons, I am attracted to the idea of the House looking more carefully at Foreign and Commonwealth affairs, but for reasons I have given before I do not want to see any replication of Committee work unless there is a special case for it. Perhaps Lord Dormand could give me an example of precisely what he has in mind. For example, how would we be sure that the House of Commons Select Committee had not looked at that area before us?

350. Unless I am misunderstanding the situation, I would have thought it would be fairly simple to discover what the committees had done in the past. What concerns me is the fact that the field of foreign affairs is a huge one. Lord Cledwyn properly asks me to give an example. I would have thought that one issue which would bear investigation at the moment is what is taking place in most of the world because of the changes in the Soviet Union. Those changes are

[Lord Dormand of Easington *Contd*]

affecting not just the EC but the Far East. What are the implications of those changes for Cuba because of the old communist affiliations? I would have thought there was a broad band of interest which would go almost worldwide.

A. I see precisely what Lord Dormand has in mind, but I still feel we would be faced with great difficulty if we had a Foreign and Commonwealth affairs committee in the Commons and another one here. Even if one was set up both committees would have to work very closely together to ensure there was no duplication. Although the world is a very large place, committees can deal with very large subjects in the course of a session. I would need to be persuaded that somehow or other the Commons committee was not fulfilling its duties properly.

*Lord Kearton*

351. Lord Cledwyn, you were very kind in saying in the first paragraph that you valued the work of the two committees. We have had a lot of evidence from outside Parliament that the work of the committees is regarded in some ways as the most important work that the House of Lords does in the sense that the committees give an overview on very large questions of general interest. To some extent I agree with Lord Dormand. A lot of things are coming up in the field of foreign affairs which would not normally come within the purview of the House of Commons Select Committee. The committee system is capable of acting as a very high level think tank able to call on a tremendous amount of expertise. It is clear that a lot of people outside Parliament would very much welcome the development of the House of Lords committee system. Their evidence suggests that the House of Lords would be more effective in influencing long range policy if it developed further its select committee system. I agree entirely with your point that to get involved in the details of the legislative process is not very sensible, but the business of giving an overview or being a thinkpiece on major affairs which affect this country may perhaps indicate that there is more scope for select committee work in that area?

A. First, I must agree with you that the work of the European Communities Committee and the Science and Technology Committee is first class and widely respected. They are two major subjects. As I have said, if the House had had in a long time, persuade the authorities to provide the necessary resources, there would be a case for a third committee. My personal experience is that the authorities are parsimonious when it comes to the provision of resources.

352. It is a question of how we use what resources we have—a point which Mr Clarke made to us very forcefully last week. I was very struck by the debate on the Address on foreign affairs. It was one of the best debates this House had had in a long time. Some extraordinarily powerful and penetrating speeches were made by some 35 speakers. The question arises: What impact do those speeches have on government policy? All governments tend to react to is what is in

the media. In the event, *The Times*, the paper record, did not publish a word of that extraordinary debate. We have had evidence from outside that a debate in the House of Lords on an important issue does not attract either government or public attention, whereas a committee report on the same subject is likely to attract a great deal of attention. Is that a proposition with which you have any sympathy?

A. I have a certain amount of sympathy with it, especially at the present time. The newspapers and media appear to have changed their policy in relation to publicising the debates in this House. There was a time when we were given equivalent publicity with the House of Commons, notably when this House alone was televised and when the Foreign Secretary, Lord Carrington, was a Member of this House. At that time, the House was given a good deal of well-deserved publicity on radio, television and in the quality newspapers. Unfortunately, the newspapers appear to have changed their format. Nor do we have the Foreign Secretary in the House of Lords. Although we were promised “a fair crack of the whip” from the media when the Commons began to be televised, we have certainly not had that “fair crack of the whip”. However, when you say that reports of select committees have a greater influence, than the House itself at this moment it could well be true. But it takes time for a committee to complete its work and publish its papers. At the end of the day such reports are debated on the floor of the House. I agree that they have considerable influence, and I know that the reports of the European Communities Committee are respected throughout the Community.

*Lord Pym*

353. On the question of having a third select committee, it is probably the case that there is not a third subject equivalent to the European Communities or Science and Technology Committee, but there would be an argument for saying you could have a third select committee in each session which looked at either one other substantial issue or maybe two lesser substantial issues in the course of a session, with the membership suitably adjusted for whatever the subject might be. Does Lord Cledwyn have sympathy with that second proposal?

A. I have great sympathy with that proposal.

*Lord Tordoff*

354. On the question of resources, what about peer resources? My experience is that it is becoming increasingly difficult to find people with the time to take up the increasing workload we have in the House so that committees of all sorts are properly manned. That leads one to ask whether those resources are being sufficiently used. There have been suggestions that perhaps the two present committees might in some way streamline their activities either by having a closer look at the number of sub-committees within the European structure or by looking at what their agenda should be and in some cases pruning it slightly. As far as the Science and



18 November 1991]

THE RT HON THE LORD CLEDWYN OF PENRHOS, CH

[Continued]

[Lord Tordoff Contd]

Technology Committee is concerned, perhaps there is a case for having shorter, sharper reports.

A. As far as the European Communities Committee is concerned, I would tend not to interfere with that committee at this stage. We are on the threshold of a single market and the Maastricht Summit. A number of other major developments are taking place. It might be reasonable to look at the structure and work of the European Communities Select Committee in a year or two when we are clearer in our minds as to how those developments are proceedings. On the Science and Technology Committee, which deals with a more restricted but nonetheless an equally important area, I should like to look at it in detail to see whether it might not be extended in some form or other. It has been suggested that they might study an urgent subject of public interest rather more speedily than they do at the moment, perhaps with less witnesses, if possible. But it is a most distinguished committee and it is fully capable of deciding how it might operate in the future.

355. Lord Cledwyn, do you agree that resources in terms of peer time is getting to be a bit of a problem?

A. It is a major problem, and I do not see how it can be resolved unless we can persuade Her Majesty to appoint 50 peers already to take part in committee work.

*Lord Boston of Faversham*

356. In the absence of a Foreign and Commonwealth affairs select committee, does Lord Cledwyn mean that were we to make a recommendation for *ad hoc* select committees such a committee could be a vehicle for a special enquiry on an aspect of foreign and Commonwealth affairs given the need to avoid duplication with Another Place?

A. Provided there was clear agreement with colleagues and officials in Another Place, I see no reason why such a study should not operate on an *ad hoc* basis.

*Chairman*

357. Lord Cledwyn, in the course of your remarks you also came out somewhat in favour of the idea of some form of steering committee to keep an eye and make recommendations upon the whole select committee work of this House, and you expressed the view that it should be a fairly tight committee. What sort of composition would you see that committee having? The usual channels would obviously have to be represented.

A. My personal view is that three or four Members might be selected who would keep the work of committees under constant review and also study the progress of work done by committees in the House of Commons. That could be very helpful to us. As to "composition", it would be helpful if the Leader of the House could be Chairman of that committee. It would not involve a great deal of work, and he would be advised by Committee clerks and

assisted by Members of other parties—the cross-benchers, the Opposition and the Liberal Democratic Party.

*Lord Boston of Faversham*

358. I was particularly interested in what Lord Cledwyn has just said about the possibility of a committee of that kind keeping committee work under constant review. By that, does he mean that one of the aspects of the work of a committee of that kind would be continuing the work of this Committee on the Committee Work of the House so that a committee such as this would not have to sit again every 10 years unless there were some special circumstances? There would perhaps be a rolling programme of review of the whole of committee work?

A. I have been thinking along those lines. I have already given one example, namely, the work of the European Communities Committee where the changes are so great and the structure and range of the work and the costs are so great that they have all got to be taken into account.

*Lord Kearton*

359. One thing which has struck me as a cross-bencher is the enormous amount of work done on the floor of the House which does not get any response from the government of the day. We have taken it up with the Leader of the House and he has said it is intrinsic in the system. He has said: "...this is a consequence of our having a bicameral legislature with only a limited number of ministers in the Lords, with those ministers in the Lords very rarely being heads of their departments, playing a very lowly role, and very often the people who are answering in the debates are whips who are not even attached to departments because there are not enough ministers in the Lords to have a Lords' Minister in every department. There is no real solution to the problem here". He went on to say he agreed it was "very frustrating and aggravating for peers if people are forever getting up and saying, 'I cannot answer that question'. . . I often feel our Ministers do not get as good a brief as do Ministers in the Commons, and the Lords are left to the end of the queue". They struck me as very interesting words which had a great bearing on the time taken on the floor of the House to get legislation through. Do you have any views on that matter yourself?

A. Lord Kearton has raised a subject of the first importance, and it would lead to a discussion about the reform the House of Lords. Under its present system, it is inevitable that the Government Front Bench of any party should be manned by a large majority of junior Ministers. At no time do we have more than two or three Cabinet Ministers. Junior Ministers are naturally restricted in what they can say. At times they are seen to be uncertain lest they venture too far in their answers, and on the whole the House is sympathetic towards them. I have sympathy with what Lord Kearton says, because complaints are frequently made that replies to questions are inadequate. I must agree with the Leader of the

[Lord Kearton *Contd*]

House in the answer he has given. There is even less he can do save to urge that the House of Lords be reformed in one way or another. I am afraid that the terms of reference of this Committee do not allow us to go very far along that road.

*Chairman*

360. Quite apart from reforming the House of Lords, there are those who have suggested that one way in which this particular situation can be improved is that before a committee report, in particular that of the European Communities Committee, is debated there should be a written response back from government. Therefore, that should be available before the Minister comes to reply after the debate. My feeling is that that would help if it was made an absolute rule.

*A.* That is a very reasonable proposal. There are subjects on which governments might find it difficult to respond with a full comment or reply on a report in time for a debate on the floor of the House. But I think it is something this Committee might consider recommending, namely that wherever it is possible that the Government should publish their response to the recommendations in a report which would enable the House to debate it fully in due course.

361. Our feeling is that the subsequent debate would be more meaningful if that happened.

*A.* That is without doubt the case, although we expect the Minister to reply fully to the debate and to

deal positively with the recommendations of the committee. Unfortunately, that does not always happen either.

362. Lord Cledwyn, you have been very patient with us. Equally patient has been Lord Rippon who is about to give evidence to us. I was wondering whether you have any comments to make on the proposals Lord Rippon put forward in the debate almost two years ago.

*A.* I recall Lord Rippon's speech and I heard it with considerable interest. I find it very difficult to resist his proposal. With other noble Lords I have expressed concern about delegated powers and their implications. We cannot adequately probe or challenge them. I read the observations of the Leader of the House on this matter. Lord Waddington favours a select committee and he laid down three conditions. I broadly support his conditions, although I would like to think carefully about the reservations in the second condition, namely, that the committee should not be allowed to see draft instruments. If they cannot see draft instruments they are naturally very limited when it comes to debates. I believe that point should be examined carefully. Lord Rippon is far more expert in this field than I am and no doubt he will deal with it fully.

363. If there are no further questions to put to Lord Cledwyn, I am sure I speak for everyone on the Committee in thanking him for coming before us and his frank and informative replies to our questions.

*A.* I am most grateful to you for listening to me so patiently.



18 November 1991]

THE RT HON THE LORD RIPPON OF HEXHAM, QC

[Continued

**Examination of witness**

THE RT HON LORD RIPPON OF HEXHAM, QC, a Member of the House, examined.

*Chairman*

364. Lord Rippon, first I should like to express the gratitude of the Committee for your attendance here. We know you suffered a quite serious injury recently which gives us greater cause to express gratitude to you. We apologise for keeping you waiting. You come bringing a considerable weight of governmental, ministerial and legal experience. I share one distinction with you; I once had the honour of being a joint parliamentary secretary in a department long since abolished called the Ministry of Housing and Local Government, but one distinction I have not shared with you is that I have never been an admiral of the Manx Herring Fleet. That said, we know your experience in the area we are now going to turn to. We have all read the debate in this House in February last year which you initiated, following a debate initiated by Lord Simon of Glaisdale. We would be very interested in any general comments you might wish to make on your proposal for a scrutiny of bills committee in the light of the Clerk of the Parliaments' memorandum?

A. Thank you for your welcome, my Lord Chairman. It has been a pleasure to wait on this occasion because the discussion has been interesting. I am particularly grateful for what Lord Cledwyn had to say on the subject of having a committee to scrutinise legislation before it is presented on Second Reading. Mr Macmillan once said "to some extent in my anecdotalage", and therefore I recall well the time when we were joint parliamentary secretaries in the Ministry of Housing and Local Government. I also recall, as Lord Simon of Glaisdale expressed in some of the debates, that in those days the Bills which Ministers presented and for which they were responsible were most carefully considered by a legislation committee which devoted a great deal of time to considering whether or not it was right for Bills to have subordinate legislation. The question frequently asked was: Why can it not be put into the Bill? Why is subordinate legislation necessary? Since those days the amount of subordinate legislation and general delegated powers, particularly the use of the Henry VIII clause to enable the executive to amend primary legislation, has grown by leaps and bounds. That is why I have become increasingly concerned about the position. I read the memorandum of the Lord Privy Seal with particular interest because that is most relevant. If there was a committee of this kind, I suppose that the Government of the day would always be concerned that it would be difficult to distinguish its comments from political opposition. I think it must be made clear that if a committee of the sort they have in Australia is set up in this House its concern is with the form of the powers, that is, whether there are ill-defined administrative powers sought by the executive or whether those powers go too far. The question is not about the purpose of the power but its necessity. I would quarrel (but not on this occasion) with the suggestion that the Government have regard only to

subordinate legislation and Henry VIII clauses on occasion and in a limited range of circumstances. I do not think that has proved to be true in the recent past. But what I am concerned with is that in a case like the Child Support Bill, which was heavily criticised on Second Reading by Lord Mishcon, the legislation was introduced by the Lord Chancellor. There was no complaint about its general policy. However, there were 94 provisions for delegated legislation, only 12 of which were subject to the affirmative resolution. We know that that is not enough. I am grateful that the Lord Privy Seal is not wholly opposed to the idea, but he raises three conditions on which I comment very briefly. The first condition is that the committee should seek to establish whether consensus can be established on the proper and improper use of order-making powers. I do not believe that is possible. The whole purpose of a committee of this kind is that it should consider whether or not in the particular circumstances of the case the power, be it a Henry VIII clause or delegated legislation, is reasonable. They would look for example at the Local Government Bill now before the House and see that it had a number of provisions for delegated legislation and one Henry VIII clause, as Lord Simon of Glaisdale has pointed out to me this afternoon. They would consider whether or not that was reasonable. The process in Australia called the red alert system allows Parliament to legislate with open eyes. Before Second Reading they would see what powers were sought and, if necessary, ask Ministers to say why they needed them. There is a second stage where they can report in more detail, if thought appropriate, before the committee stage. The second condition is that it should be clearly understood that the standing/select committee should not, in its consideration of the enabling powers, see draft instruments. It could enquire about the general purpose of powers but should not expect full details. I do not think that is necessarily an unreasonable condition. What the committee would be looking at are not the details of the delegated legislation. If it decides it is fair that the Government should have delegated powers Parliament can consider later on whether or not it has used them properly. The third condition is also probably sensible namely that any standing/select committee should be established on a limited and Experimental scale in the first instance.

365. You are aware of the terms of reference of the Australian Senate Committee. It has five main terms of references, some of which go pretty wide. (iv) is concerned with inappropriate delegated legislative power and (v) is concerned with legislation which is insufficiently subject to the exercise of parliamentary scrutiny. I think I am right in saying that the Lord Privy Seal's evidence was that those five areas covered by the terms of reference went too wide. Have you any comments to make generally on how wide the terms of reference of any such select committee should be?



[Chairman *Contd*]

A. In the speech I made on the subject on 14 February 1990 I called attention to the case for a select committee to scrutinise all Bills coming before Parliament and to report on whether such Bills contained insufficiently defined administrative powers or proposed any inappropriate delegation of legislative powers. I felt they were the two most significant powers, although later on I referred in full to the terms of reference. It may be thought that Parliament's attention is drawn much more closely to personal rights, liberties and matters of that kind than other things. It occurred to me that if one wanted to make progress one should perhaps not be too ambitious.

*Lord Tordoff*

366. It seems to me that the Australian package is a workable one. I understand what Lord Rippon says about proceeding slowly in these matters, but does he think that the package as a whole is unduly wide?

A. I do not think so. At least it has worked extremely well in Australia. I have studied what they have done. They have put a full report of our debate into their Senate report. Clearly, they are very much interested in our views on it. What is more, I submit that it does not take up any extra time but saves it. In practice, they seem able to scrutinise a large number of Bills looking at all five points of reference in a relatively short space of time. I believe they considered 220 Bills in a year, on 40 per cent of which they made comments. I think that on one occasion the clerk dealt with 40 Bills over one weekend. If you are really drawing the attention of the House of Lords to where the executive appears to be taking an excessive power, or indeed interfering in some way with civil liberties, without expressing an opinion on the policy or purpose, there is no reason why it should not be done. That is why it is impossible to find a consensus on what the criteria should be. Because the Bills are so varied one must take each one as it stands. For instance, it maybe perfectly reasonable to have delegated legislation about a rate of tax but not on the tax itself.

*Lord Pym*

367. I ask Lord Rippon what he thinks the criterion should be. I accept it might be difficult to get a consensus, but on what sort of basis would a committee, if set up, judge whether or not it was legitimate to insert this particular clause or delegated legislation but not that?

A. Take the Children's Bill which originally provided that the whole of Part I should be subject to amendment by regulation. I think it would say that that was an excessive power, certainly an ill-defined one. Trying to find a consensus or criterion would immediately put you into difficulties, because a lot of time would be spent trying to define criteria or to get a consensus. One has an example in Australia of a system where each case is judged on its merits and it works perfectly well. If you set up a committee on an experimental basis and each year it is reappointed, as it is in Australia, the first year's work will establish the criteria.

368. Do you not think there is a political element in this, in the sense that with the pace at which politics move today and with the expectations of the public, legislation is introduced without sufficient preliminary consideration because there is not enough time to carry through such consideration? I suspect that is the reason why there is so much delegated legislation. If that is the case it seems to me quite difficult to imagine that a government would be prepared to reduce the amount of delegated legislation it includes in primary legislation, however desirable you or I think it might be?

A. I think the quality and quantity of legislation is a separate topic worthy of very careful consideration. The Local Government Bill is the 101st Bill affecting local government in 10 years. Half of that legislation may last two years. The committee's activities are fairly narrow and that is why it is effective. It is designed to prevent the executive taking pervasive powers which might be misused. The purpose of legislation is not to enable a good Minister to do good things; it has to be so drafted as to prevent a bad Minister doing bad things in a parliament which has virtually no control over delegated legislation, even when it is subject to affirmative resolution. I gave one example from my own experience which fortified me in that view. I was Secretary of State for the Environment but after we lost the election I was appointed by the Treasury as counsel to defend a regulation which had been made in my name by a junior Minister. It concerned the rating of a docks and harbour board. The effect of the regulation was to put the rates up from about £5,000 a year to £55,000. But the order apparently double-rated; it rated outside the jurisdiction and rated according to a formula. There was no problem before Bridge J. However, when I got to the Court of Appeal Cairns LJ subjected me to a vigorous three-day examination to try to shake me. At the end of it he asked me, "Are you saying that the Secretary of State could have rated this hereditament at twice the salary of the chief executive?" I replied, "Yes. Parliament gave the Secretary of State absolute powers and he exercised them". That is the sort of thing that is happening. The Lord Privy Seal says, it is not covered by judicial review; judicial review does not operate when Parliament has given the Secretary of State absolute powers. I think that would be picked up by a scrutiny committee. A scrutiny committee would say, "Why in this Bill are you taking this power, and how far can it go?" I think that would be helpful and would provide a reasonable curb on the executive. What is happening in Australia is that it has made the Government there much more careful about drafting in the first place. Questions which used to be asked by the legislation committee before it became a business committee are now asked in Australia by the Scrutiny Committee. Because it is in open debate it will be more effective. I do not think it is good enough to say, "We asked the law officers about it and it is all right".

*Chairman*

369. You may well be aware that Lord Thurlow is going to Australia in four days' time to a seminar which the Australian Parliament is having on this



18 November 1991]

THE RT HON THE LORD RIPPON OF HEXHAM, QC

[Continued]

[Chairman *Contd*]

particular subject. Are there any particular points which Lord Thurlow should be looking into when he is there, apart from the question of remit and terms of reference? I am talking of mechanical things like the legal advice the committee should have, its composition and so on.

A. I am sure they will give him help on some of the cases where it has operated. On the question of composition, I think they have solved it reasonably with a committee of six. Three members are nominated by the government side. The Leader of the Government nominates the chairman who has a casting vote. As I understand it, that casting vote has never been used. They operate as a select committee without looking at the politics or purpose behind the legislation. They have the power to form sub-committees of three. Looking at how it works and how frequently it meets—a digest comes out every Wednesday—I imagine that would be quite useful. It does not take up the time of too many people. As far as legal advice is concerned, as here, they rely heavily on legal counsel. They have had two but now have one. I do not think the resources required are necessarily great. However, one wants someone of fairly high calibre acting as legal counsel and a reasonable clerk for the committee.

Lord Tordoff

370. Do you feel it may become staff-driven?

A. No more than any committee—even this committee—is staff driven.

Lord Boston of Faversham

371. On a mechanical point, I do not know whether Lord Rippon has given any consideration to whether the work could be done by the Joint Committee on Statutory Instruments, with its terms of reference sufficiently expanded. That Joint Committee is looking at statutory instruments which are already in draft or in some cases actually in force. This one is looking at the possibility of delegated legislation under the Bills which Lord Rippon has mentioned. It might be thought by some people that scrutiny of that kind could be beneficially done by some sort of committee of the two Houses. The proposed powers are relevant to both Houses. Has Lord Rippon considered that in formulating his proposals, or does he think it would be inappropriate? One bears in mind that the existing Joint Committee looks simply at whether a particular instrument is *ultra vires* or *intra vires*, not at the merits.

A. I think it would be a mistake to try to combine

the two functions, and that is why I say it is not unreasonable for the Lord Privy Seal to emphasise that the committee should not duplicate work that is already done or ask to see the draft of an instrument. I think that at Committee Stage in the Lords on some occasions people can demand to see a draft, if that seems appropriate. Sometimes the Government can and will do so; sometimes they cannot and will not. But that is an issue to be fought out elsewhere. I think it is best done by a committee of the House of Lords limited in this way, looking at things before they happen instead of *ex post facto*. It is best done by this House because, as the Lord Privy Seal says, on the whole we are perhaps more interested in these matters and have more time to consider them. In this case the committee would not be duplicating the work of any other, as in the case of the Science and Technology Committee and European Communities Committee or (as I hope one day) a committee dealing with relations between central and local government.

Lord Pym

372. If there was such a committee what would be its membership?

A. I would say it should have between six and eight members—certainly no more. There has been a suggestion that a Law Lord should be chairman, or it should be chaired by someone particularly concerned with the desirability of preventing the trebling of judicial review cases of the sort we have had in the past 10 years.

Chairman

373. Given the appalling volume of legislation these days, do you think the committee should be selective? Should they look at all the relevant provisions of Bills?

A. In Australia, they deal with 220 Bills in a year and they comment on 40 per cent of them. The legal adviser would be able to say, “There is nothing to worry about in *this* one but you ought to look rather carefully at *that* one”. I would not suggest that they just look at a few, certainly not in the first instance. Perhaps after a year they may say they need to change the terms of reference or method of working, but in the first instance they should see them all.

374. Would you be prepared to be a member of that committee?

A. I would certainly be prepared to consider it if the honour is done me.

Chairman] If there are no further questions to put to Lord Rippon, we thank him very much indeed.

*18 November 1991]**[Continued]***Response to the Committee's Questionnaire by the Rt Hon Lord Shepherd**

Dear George

Thank you for sending me the questionnaire for the Committee on the committee work of the House. I am happy to enclose my replies to the questions. I have commented only on the work of the European Communities Committee of which I have been a member for some six years. I was Chairman of Sub-Committee B for five years. As a member of the Maybray-King Committee I am able to say that the Committee has succeeded beyond all our expectations. This is due to the quality of members who serve on the Committee, and the time they are able to devote to its work; and to the calibre, interest and dedication of the Clerks.

I would like to make one general observation. I believe most strongly that one purpose of an investigative committee like the European Communities Committee is to contribute to the general body of knowledge so essential to a democratic parliament. One of the main strengths of the Committee's reports is that they make easily accessible a whole range of views on any one subject. This information is useful not only to our own government but also to the organs of the European Community.

Shepherd

The Rt Hon Earl Jellicoe KBE DSO MC FRS

**Reply to Questionnaire on Committee Work by the Rt Hon Lord Shepherd***Question 1*

(a) The crucial fact to consider in answering the question is that the European Communities Committee is the only means available to the House to scrutinise proposals for European legislation in any detail. And in spite of the recent changes in the House of Commons, their scrutiny remains far less thorough than that conducted here. I believe that there is a need for a scrutiny committee such as ours.

(b) I believe that there is a need for a committee to consider the administration of policy as this is crucial to implementation. As far as European policy is concerned, this could be a committee to consider the administration of the Structural Funds, or to monitor fraud in the Community. In domestic terms, a possible subject would be the administration of welfare to the young, the mentally ill and the elderly. Such committees would fit in well with the House's role as a revising chamber.

(c) Yes, provided that suitable subjects are available. By this I mean subjects which it is of genuine value to consider, and which are of sufficiently general interest.

(d) The size of a committee is far less important than the quality of its membership. My experience of Sub-Committee B showed that a good balance between experts in the subjects the Committee considers and "lay people" able to assess evidence and assist in the drafting of reports makes for a lively, interested and informed committee.

(e) No. Reports should be debated within one month of publication, unless the committee requests otherwise. A written response from the government should always be available before the debate. If it isn't, the minister's response at the end of the debate easily becomes a repetition of the prepared briefing (in effect, the minister reads out the government's written response), rather than a genuine reply to the debate. Many reports do not receive a government response, although some departments are more keen to respond than others. It is unsatisfactory that some reports receive no response at all.

*Question 2*

I support the paper submitted by the European Communities Committee. I would stress the importance of detailed scrutiny work, in particular the examination of the *vires* of Community proposals which is so well carried out by Sub-Committee E. One of the main strengths of the present structure is the autonomy of the Select Committee Chairman in sifting proposals and in the decisions taken by Sub-Committees themselves as to which enquiries to conduct and to what extent. I would draw the Committee's attention to a procedure developed when I was Chairman of Sub-Committee B. The Sub-Committee on occasions produced reports after taking written evidence only, without oral examination of witnesses. This allowed us to scrutinise certain fast-moving but limited proposals without interrupting out timetable of major enquiries. I believe such work—and work such as the system of correspondence with ministers—provides a valuable complement to the committee's general investigations.

I would like to comment on another particular aspect of the Committee's work, namely how duplication with the work of other committees is avoided. When Sub-Committee B undertook an enquiry into Research and Development, three members of the Committee on Science and Technology were co-opted on to the Sub-Committee. This ensured that our work fitted in with theirs. The arrangement was made informally but it worked. Duplication with the work of Commons Committees is avoided by the nature of the work, and by



18 November 1991]

[Continued]

contact between Clerks. Our work on Research and Development was taken up by the Science and Technology Committee and the Commons Education and Science Committee once our enquiry was over.

I will make two criticisms of the Committee's working methods. First the speed of proposals and financial constraints have meant that it is sometimes only possible to consider proposals from the United Kingdom's perspective. I would favour (as already suggested) enquiries into the Community-wide administration of Community policy. Such enquiries would not be pressured by the Community's legislative timetable or by the meetings of the Council of Ministers. They could also provide information about the position in other member states which, in my experience, even Departments sometimes do not have.

Secondly, I agree that the Clerks of the committees are at present over-stretched. I would make two suggestions to combat this. First, greater use could be made of other staff, such as specialist assistants or general office assistants to do routine work such as proof reading. It might also be useful to have a pool of specialist advisers available to comment on proposals before a committee commences any enquiry. I made informal use of such a system as Chairman of Sub-Committee B. Secondly, there may be a case for recruiting, on a short-term basis, young departmental Civil Servants at graduate level. They could provide additional help as—in effect—temporary clerks; and would in return gain experience of the parliamentary system.

(b) Yes to both parts.

3. No comment: I have never worked with this Committee.

4(a) The case made at the time of the Practice and Procedure Committee remains valid: some such system of committees could save time on the floor of the House. But the problem remains of how to prevent the House repeating the Committee's work at later stages. Third Readings of bills are tending more and more to become like report stages—tightening up that procedure would be another way of saving time on the floor of the House.

4(b) and (c). As already suggested, it might be more practical to set up a committee or committees on the administration and implementation of policy, thus turning the expertise of the House to bear on an area that the House of Commons is not always able thoroughly to review.

#### Examination of witness

THE RT HON LORD SHEPHERD, a Member of the House, examined.

##### *Chairman*

375. Lord Shepherd, I fear we have kept you waiting. Like your two predecessors, you bring to our discussion very considerable experience of this House and a particular interest in select committee work. I need not remind the Committee that you have been Chief Whip for six years. You have been Leader of the House. You have been a prominent member of the European Communities Committee. I open the bowling by asking you whether you have any general remarks to make about our committee structure. We have read your full and admirable replies to our questionnaire, but in the light of the memoranda you may have seen I wonder whether you have any general remarks to make about select committee work in the Lords?

A. I once served under Lord Shackleton as Deputy Leader and for a time as Chief Whip. I shall be very circumspect in what I say. There are three points I should like to make at the outset. First, I want to talk of the importance of select committees of this House. We are deeply indebted to the clerks for the quality of the contributions and dedication that they show to those committees. From time to time the committees can be overstrained. If we are to extend the committee system, as I believe we should, I think we have to face the problem of provision of committee resources. In my memorandum I suggest one way in which clerks to committees can be found. If such a scheme could be adopted I think it would be

very beneficial to the civil servants concerned and also to the department involved. Specialist advisers have a particular role to play. They do not participate in the decision-making of the committees but they are essential in terms of getting an enquiry started. Based on my experience of Sub-Committee B, the enquiries can take a number of forms. On transport matters, which came to the fore at the end of the single market procedures, there was an avalanche of proposals coming forward from the Commission. The Sub-Committee undertook some enquiries by written question and answer. We found that to be not as good but nearly as good as taking oral evidence. In that case a specialist adviser becomes very important in framing the questions to put to organisations under a written questions procedure. One of the difficulties we experienced was that time became very short between the announcement of Commission proposals and the meeting of the Council of Ministers. As I understand it, one of the difficulties with timing is that we have procedures by which the name of a possible adviser has to be submitted and approved (in the case of the European Communities Committee) by the main committee. If we were to have a similar system—not entirely the same—to that in the other place where there is a list of specialist advisers on whom we could call, if only for the provision of papers, it could be done very quickly. The question of payment is a factor. At the moment there is a delay particularly when there is a meeting of the main committee two or three weeks hence.

[Chairman *Contd*]

Perhaps we can in some way overcome that so there is a quick enquiry in the form of written evidence, written questions and written answers, if we had a list of specialist advisers who could be called upon and paid the commensurate rate for their advice to that committee. It does not mean to say we do not go through the normal procedures in order to get authority for the appointments. Another, perhaps more important point, is that we have an information officer who is an official of the House and is basically reactive; he reacts to questions which the media or general public may put to him. I think there is a case for saying that the information officer should be informing the media to a greater extent as to the work of the committees and the stage they have reached and, in particular, as to the time when reports are due to be published. My wife once asked, "What do you do on these committees?" Unless there is media or general knowledge about what is being done much of the work may not be of real value. The information side of the House in terms of the work of committees should be much more of a proactive rather than reactive role as at present.

376. I have a feeling that the practical points you put to us, not least those on staffing and the question of publicity and information, are those we will need to ponder rather carefully.

A. I know there is tremendous pressure on clerks' time. Obviously, those in authority have to watch the pennies, but there is a limit to what a clerk can do if a committee is undertaking a major enquiry. In terms of House responsibilities that is right and proper, but I think that to undertake the servicing of yet another committee will put too great a strain on the clerks and may result in a diminution in the quality of the reports.

377. Should there be one clerk per select committee?

A. If possible. That is not a hard and fast suggestion, but if there are major committees such committees ought to have a full-time clerk.

378. I know you have been and are very much concerned with the European Communities Committee. Would you like to make any general observations about its work? We all know the very high standing in which it is held here, in Brussels and Strasbourg. What do you feel about its future? Will it be able to adapt to the quicker pace of European legislation in the future? Will it need to expand? As you know, it already makes a very considerable call on the resources of the House.

A. I think that until we know what comes out of Maastricht it is very difficult to foresee the long-term future. I believe that over the years the European Communities Committee has adapted to the pressures placed upon it, and it has been flexible. As an example, Sub-Committee A on which I serve under Lord Aldington will undertake an enquiry into what may be the future of the EC with all the countries that are applying for membership. Apart from that, one has to consider the profound effect on the EC of the associated arrangements with Eastern Europe, Turkey and Cyprus. We will not necessarily

undertake that enquiry as Sub-Committee A; we may bring in on an *ad hoc* basis other Members of the House who have a contribution to make. I think the EC committee has already shown its adaptability and I would not want to see it in any way circumscribed. It is far better for it to be left with its own responsibility, able to react to events as they come forth. None of us knows what the consequences of Maastricht will be. I am fairly clear in my own mind that whatever comes out of Maastricht in the way of a move towards what may be a federal system there will be a need for scrutiny of what the Commission and Community are doing. As I put in my paper, the scrutiny committee's role is the broadening of knowledge within Parliament and outside it. I think the role of the scrutiny committees within the British Parliament will be essential in the foreseeable future. I could not put a date to it but even under a federal system it must be in our interests to know what is happening within the "federation".

*Lord Thurlow*

379. Some of the academic evidence we have had suggests that with the prospective increase of the powers of the European Parliament this kind of scrutiny will progressively become the responsibility of the European Parliament. I realise that one is jumping quite a long way ahead in visualising such a contingency, but have you any comment on it?

A. Academically, I can understand the point put to you. We are part of the British Parliament and are answerable to the British people. I would have thought we ought to have some system by which scrutiny is undertaken. One of the interesting things we have been doing from time to time in the European Communities Committee is questioning the *vires* of Commission proposals. It was sometimes, only our Committee that found that there was doubt in terms of *vires*, not within government departments. I rest on that point. I believe there is a case for continuing scrutiny even in a federated state.

*Chairman*

380. I gather from your answer to question 1(d) of our questionnaire that you imply in certain cases quality is far more important than quantity as far as the membership of some committees is concerned and perhaps on some occasions the sub-committees are rather too large. I ask that question merely because of the very considerable strain on peer resources of the House which such a very important committee imposes. What do you think about the publicity given to committee reports? You say that at times the government replies come too late?

A. I replied as I did to 1(d) where you raise the question whether or not the House has the resources to man these committees. Certainly, the sub-committees of the European Communities Committee, which are made up of main committee Members and of those who are invited to sit on an *ad hoc* basis, are about right. You will know that Members of this House have the right to attend any committee of this House. When I was chairman of Sub-Committee B on transport I found I would have



18 November 1991]

THE RT HON THE LORD SHEPHERD

[Continued]

[Chairman *Contd*]

19 or 20 peers coming quite regularly. I am not saying it was too many but in a sense it limited the number of questions that could be put by the Members. I want to stress quality and also the importance of having non-expert and non-interested Members sitting with you. If you are dealing with transport you do not want to have to write a report that is dominated solely by those who are interested in railways or roads; you want to have others who can bring a touch of commonsense to the deliberations, particularly at the time of writing the report. That is why I refer to the fact that quality is more important than numbers. I do not think that within the European Communities Committee, other than the exceptions in the case of transport, there is a problem with the number being either too large or too small.

381. I think that in introducing one of the sub-committee reports some time ago you pressed very strongly for the Government to reply within a month to reports emanating from the European Communities Committee.

A. Since I made that speech things have improved. I have to be careful in what I say since Lord Shackleton, Lord Jellicoe and myself are ex-Leaders of the House and have had responsibility for the conduct of business. One of the problems is that our one great desire is the passage of legislation. Therefore, the question of finding time for debates on Lords committee reports has never been easy. There have been occasions when major reports have been lying around for four to six months and suddenly one is told there can be a debate on it next week. That is neither good for the House nor satisfactory for the committee concerned, but what is more important is that it is not satisfactory from the point of view of all those who have given evidence. One should not underestimate the cost factor in relation to organisations like the CBI, the TUC and other organisations in the City who have been asked to give evidence on a major point. They do that most willingly, and then the report comes out and the Lords take six months to debate it, by which time it has lost all possible impact which the debate should have. On one occasion I had been promised first business having waited for some time only to find that legislation was put in front of it. I rewrote my speech and put in that little bit because I felt strongly about it. They are reports of major committees of this House and they should be treated with a little more respect than in the past. I put a month as an objective. If departments feel they are unable to respond to a debate constructively there are always ways in which consultations can take place and an understanding reached. Unless there is some rule of thumb I think it can easily be put right at the very end of the day, or maybe on a Friday, without any real prior notice of the debate. Some departments are very good in replying to a committee on its report; some are less than good. Frankly, some ignore the reports as though they have never existed. I think that in a sense that is a reflection on the House itself, given that the reports are to the House.

382. I think it is fair to say that the evidence we have received from a Foreign Office Minister is that

the reports of the committee are important and should normally be replied to within a month in writing, though sometimes it may take two months. The Lord Privy Seal in his evidence to us said that sometimes they might take three months, but when he gave evidence to us he came down to two months. It seems to me that your advocacy in that respect has not been without effect.

A. It has improved and I hope that improvement will continue.

*Lord Pym*

383. I think the essence of your advice to us about the European Communities Committee is that we should leave it alone and it should adapt to future changes, as it has adapted in the past. I just wonder whether in view of the proportion of our resources that it takes you see any scope for reducing or limiting the extent of their remit, or whether their enquiries can be rather more sharply focused so the total volume of their work is slightly reduced. My second question is that you said at the beginning you favoured the committee system as we have it and would like to see it extended. I wonder in what direction you think it ought to be extended.

A. I am not too confident in answering the last point in a broad sense because the European Communities Committee has concentrated on the policy proposed by the Commission to the Council of Ministers. As a personal view, I have become more and more concerned that what is important is the ability to look at the way in which the policies and interventions which the Commission have undertaken really have the results intended. At the moment, Sub-Committee A is looking at structural funds. We have not been able to spend any time on looking at the administration of those funds. We hear criticisms of the way it is being implemented and processed, but although it is within our terms of reference there is no way in which we can look at what is crucial to the Community: value for money, the monitoring system and the general administration of the Community. The difficulty is that to do that one would have to spend a good deal of time in Brussels. The resources which you mentioned in your first question become very important. In regard to resources available to the European Communities Committee, if you take my view that the work that committee is undertaking is of value then it is a question of willing the resources. If we do not will the resources the work of the committees is in question. I believe it is a question of the Government and House saying whether the resources should be made available for what they believe to be an important role by this House, bearing in mind that through its membership the House is able to undertake the reviews. A number of people have the necessary knowledge and experience and are willing to undertake it, whereas in the House of Commons, leaving aside the terms of reference under which their committees operate, Members cannot find the time to do the sort of enquiries that this House undertakes. Therefore, it is a matter of each

[Lord Pym *Contd*]

House identifying what it can best do in terms of Parliament as a whole.

*Lord Dormand of Easington*

384. Lord Shepherd used the phrase "willing the means". When I first came to the House of Lords it seemed to me that that was the obvious thing to do, and I was more naive than I thought. Since then I have learnt that, whether it is the Government or the House as a whole, willing the means is not just that simple. At the end of the day, it is the Government of the day who wills it. Presumably, because of the view taken nowadays of expenditure both a Tory and Labour government would create difficulties in willing the means. I am pleased Lord Shepherd has mentioned this crucial matter, but is there an answer to it?

A. In a sense, it is a question for the House itself. Yes, it is a matter for the Government but if the House itself through its Leader was to make it clear that this important role should be developed the Leader of the House would be in a very strong though not impregnable position in negotiating with the Treasury. I understand the problem. If the House, having set up this Committee to look at the work of committees took the view I have taken, its recommendation could well be to the Leader that the committees are important not just to the House of Lords but to Parliament as a whole and they should be supported. I do not think anybody would say of your Lordships's House that we are in any way spendthrift. I do not think I have heard any criticism of any of our committees or activities to the effect we have made abnormal or unacceptable demands on the Exchequer.

385. From what Lord Shepherd is saying, I gather that at the end of the road it is the Government that wills the money. He uttered the dreadful word "Treasury". The Treasury is part of the Government. From our knowledge of this place, we assume that the Government of the day are bound to take great cognizance of what the Treasury says. The answer to my question appears to be that at the end of the day it is a matter for the Government whether the money will be made available.

A. But it is also for this House to make it clear.

*Lord Pym*

386. At the end of the day it is a Cabinet decision?

A. Yes.

*Lord Kearton*

387. What I find very impressive is the number of ex-Cabinet Ministers who are willing to serve on these committees and find it a very worthwhile thing to do.

A. I think we have the membership of the committees that we have because it is genuinely believed that it is a worthwhile contribution the House can make, as opposed to making speeches on the floor of the House. This is the way they feel they can make their best contribution to Parliament.

388. It is a unique contribution?

A. Yes.

*Chairman*

389. Up to now we have concentrated on the European Communities Committee, but another very important committee is the Science and Technology Committee. Again, it rightly enjoys high prestige. I should like to have your view as to whether if resources permitted there would be scope for having another standing or sessional select committee? You have mentioned the possibility of a committee to look at the welfare of the young, the mentally ill and elderly—all areas where the House can bring to bear knowledge and experience. Do you think it would be desirable to create perhaps an *ad hoc* select committee per session? We have had some very important and authoritative select committees. What would your preference be as between the two?

A. One of the things which comes in later life is the ability to look back at the legislation passed by one's government and legislation passed by successive governments. It is very difficult to find within our parliamentary system what we demand of the Community, that what they do should be monitored and we should get value for money and an organisation should be set up to pursue the consequences of legislation. We have none of that in this country. I think Parliament has a role other than the passing of legislation and acting as a check on the executive. We have now reached the stage where Parliament ought to have an interest in the way legislation has been implemented and has succeeded or failed. If it has failed, why has it failed? Is it due to the machinery of government? We pass legislation nearly every week giving local authorities responsibilities and duties, but we as Parliament seem to wash our hands of it. I only mentioned old people's homes and young children because they were topical at that moment. If there was a problem we now ask a judge to conduct an enquiry. The judge then produces his report. How effective is that report in terms of the way in which children's homes are run throughout the country? What is the system and method of administration? I think back to 1977 when proposals were made for the setting up of policy committees which were topical at that time. The House of Commons has now changed or adopted a new procedure. That is something this House could well do. The House is made up of people with experience in government and local authorities. We could have a look at monitoring legislation, divorcing it from policy. Is the machinery put in place right and proper in terms of the enactment and the purposes of legislation? I do not believe that a committee looking into it would in itself change everything. However, I cannot help but reflect that nobody today talks about the Parliamentary Commissioner (the Ombudsman). We do not hear about him, but I can assure you that within departments there is always the prospect of something being returned to the Parliamentary Commissioner, so they look at policy and the way it is administered because it could be a problem. If we



18 November 1991]

THE RT HON THE LORD SHEPHERD

[Continued]

[Chairman *Contd*]

were to have a committee procedure similar to the European Communities Committee to look at the administration of legislation, or certain aspects of it, and see whether lessons could be learnt and departments got value out of the reports, I believe it would be a major contribution to the efficiency of government. That view has gathered more and more strength as far as I am concerned in the recognition that we have nothing at all in our system other than by way of question and answer in the House of Lords or House of Commons, which at the end of the day gets you nowhere. What is required is knowledge and experience, and the only way of getting it is through a form of select committee procedure.

390. It would be a sessional committee looking at the implementation of legislation?

A. Yes.

391. You would prefer that to the ability to establish, say, an *ad hoc* committee from time to time?

A. *Ad hoc* committees can be of great value, such as that on Murder and Life Imprisonment. But if you are dealing with administration, as in the case of the European Communities Committee, success rests upon the continuity of its Members and clerks who service it. In my view, an *ad hoc* committee would not provide that continuity. If you thought it was a right and proper thing in terms of looking at administration to set up a sessional committee similar to the European committee I would go for that as opposed to an *ad hoc* committee. I do not think an *ad hoc* committee would get you very far. The need to look at administration in a non-political sense is very important.

Lord Thurlow

392. Would Lord Shepherd regard the problem of selection of topics or the relevant legislation to be monitored as presenting any serious problems? The parallel with the European Community is a limited one, because in the case of scrutiny of what comes out of Europe there is, as it were, an automatic agenda from all the material produced by the Commission, whereas as far as I can visualise it here we are presented with the entire spectrum of British administration. Lord Shepherd mentions examples which have been very much in mind of late: the Mental Health Bill, and so on. I imagine he would not contemplate looking at what is specifically topical at the time but would be keeping an eye on what was going on generally and legislation from the past?

A. Perhaps I may say I am a conservative by nature and I believe in putting brick on brick. If we had a committee of the kind I mentioned we would build up experience on that basis. I do not think we could undertake such a broad spectrum as, say, the National Health Service. But there are elements of the National Health Service and elements of local government, in terms of its responsibility for looking after the old or

young or mentally handicapped, which could be looked at. One could identify areas worthy of investigation having regard to the expertise and knowledge to be found particularly on the back benches. We have a tremendous amount of knowledge and experience which through a committee procedure I believe could make a major contribution to a general debate not just within Parliament but outside it.

Lord Shackleton

393. Perhaps I may say we have had an absolutely fascinating discussion. I should like to congratulate my former Deputy that he has done as well as he has. If I may say so, both Lord Shepherd and Lord Rippon provided a distinctive clue to the problems which confront us. Both understand the procedure. Lord Shepherd was a very good Chief Whip. There is a lack of understanding in the committees themselves. There have been occasions in the Science and Technology Committee when attempts have been made to find a smooth solution or even a reluctance to tangle with the Government. There are times when the committee chairman needs to take a rather tougher view, which sometimes brings results. As an example, you will recall that recently we have discussed the future of HMS *Endurance*. The fact is that we have won that with the strong support of the House of Lords and the intervention of the Chief Whip and Leader of the House who have pointed out to the Government that we cannot expose Lord Arran to the rough treatment being meted out to him in the House of Lords. That has turned the result. I must admit that when I was Leader of the House I was never very conscious of the importance of committee work because we then did not have the committees we now have. But an understanding of the procedure on the part of the chairmen of these committees is a necessity. Some of the evidence given here indicates the importance of knowing how to operate the procedure of the House.

A. To comment on what Lord Shackleton said (based on quite a few years of experience), I am reminded of what I said to some Spanish Members of Parliament: "Come to one of our select committees and you will not know who is a conservative and who is a socialist. The committee is operating on the evidence before it". I have never been terribly worried in terms of the political composition of a committee. It is nice to have a balance, but my experience of Lords committees is that they make a judgment on the evidence before them, and I do not think there can be anything more valuable to Parliament than that.

Chairman

394. Unless anybody else would like to put any further questions to Lord Shepherd, on those wise words I should like to draw our deliberations this afternoon to a conclusion. Thank you very much indeed, Lord Shepherd, for your carefully considered replies.

A. It has been a pleasure.

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WEDNESDAY 27 NOVEMBER 1991

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Present:

Bancroft, L.	Kearton, L.
Beaverbrook, L.	Pym, L.
Boston of Faversham, L.	Tordoff, L.
Dormand of Easington, L.	
Jellicoe, E. (Chairman)	Shackleton, L.

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**Response to the Committee's Questionnaire by the Rt Hon Viscount Whitelaw, KT, CH, MC, DL**

Dear George,

Many thanks for your letter of the 24th May, about the Select Committee on the Committee Work of the House. I am enclosing my views, which are really divided into two.

My main points are of general concerns affecting the way the House conducts itself under present circumstances. I believe that any changes such as are proposed by the Select Committee depends on how the House is going to limit itself in the general conduct of business.

My two points follow some of the detailed questions you ask.

Since I came to the House of Lords in 1983 as its Leader, I have seen a continuing change in the way that the House conducts its affairs, which I believe in the long run will be detrimental to its work. I say this because the success of the House of Lords depends above everything else, upon its own self-discipline. That is the fundamental difference between the elected Chamber of the House of Commons and the non-elected Chamber of the House of Lords. I do not believe that our Parliament would be best served by the House of Lords becoming increasingly a pale image of the House of Commons. It should maintain its own distinctive way of working and so work within the limits which have been laid down over the years.

One anxiety about the self-discipline of the House is centred on two factors:

First, the Government, (and I personally plead guilty from my time in Government), place far too large a legislative burden on Parliament in general, and so, in particular, because of its composition and its way of working, on the House of Lords. The result is that the House of Lords spends too much time on detailed legislation, and in any event sits far too long, including far too many late night sessions.

Secondly, many more members speak, which may or may not be a good thing, but most of all, they speak for longer than they used to. This is shown by the time taken for Questions every day. Originally they were supposed to continue for 20 minutes, it is now said it strictly must be maintained at 30 minutes. I have noticed recently that this has meant that 30 minutes becomes almost a rule.

I believe that debates with limited speaking times show clearly that short speeches can be very effective. The lack of a structured timing guillotine and, of course, above all a Speaker with powers to control debate, as in the Commons, means that often members have unbridled opportunities to talk at length. That, in my judgement, was never intended in the House of Lords, and is inimical to its success. Unlimited debates go on for so long that many Noble Lords simply cannot give the time to sit right throughout such debates, as is the very proper custom. The result is that they simply do not put their names down to speak, and we are losing some very valuable contributions from Peers who cannot be bothered to sit out endlessly long debates.

I realise that if the House is not prepared to discipline itself, either drastic changes have got to be made, which I will not support, or we simply have to accept something along the present lines. My belief, therefore, is that some recognition of the need for brief interventions, that should also be accompanied by a Government determination, which I believe would be good for Parliament as a whole, to limit its legislation. I believe that unless this fundamental problem is faced, limited changes such as set out in your paper, will be difficult to carry through.

**DETAILED ANSWERS****1. General**

- (a) In general I think that the balance of work between the European Communities Committee, the Science and Technology Committee and occasional *ad hoc* select committees, is reasonably satisfactory. I very much applaud all the work that is being carried out in these Committees, which I believe is very important, and certainly enhances the prestige and position of the House of Lords.
- (b) I think that there are occasions when select committees on other policy areas or subjects could make a useful contribution, but I hope that if such are set up they will be very limited, otherwise I believe we shall try to do too much.



27 November 1991]

[Continued

- (c) “*ad hoc*” select committees on specific subjects have had some success, and on a very limited basis are to be considered.
- (d) I suspect that the House is already taking up as much of available staff time to the work of select committees. I do not believe that the resources of the House as far as staff are concerned could support much more, and it probably is the same of the members who would be prepared to take on the work.
- (e) The debates on select committee reports are too often held either late at night, or at inconvenient times. The remedy for this lies in what I have said about the general approach.

## 2. *European Communities Committee*

- (a) I have insufficient detailed experience of this work to know whether the present arrangements are satisfactory.
- (b) I read some of the reports of the Committee, but I have never up to now taken part in any of the debates on the floor of the House.

## 3. *Science and Technology Committee*

- (a) I have insufficient knowledge of the work of this Committee to express any valuable views.

## 4. *Consideration of Legislation Off the Floor of the House*

- (a) My experience of sending a Bill up to a Standing Committee off the Floor of the House was a failure. The problem is that if the Bill is contentious, members of the House have wanted to take part on some aspects and not others and, of course, if the Bill is taken off the Floor of the House, this limits that option. It is also clear that the only Bills that are effectively sent up under present House of Lords procedure to some Committee, are non-controversial Bills. It is doubtful, therefore, if it is really worthwhile to send them in any event.
- (b) It follows from my last comment that I am not in favour of the House making greater use of select committees to consider legislation. I simply do not believe that this would work, nor would it suit large numbers of members of the House.
- (c) For the reasons given above, I do not believe that present House of Lords procedure would really permit of such a proposal working.

Whitelaw

The Rt Hon The Earl Jellicoe, KBE, DSO, MC, FRS,

### Examination of witnesses

THE RT HON VISCOUNT WHITELAW, KT, CH, MC, DL a Member of the House, examined.

#### *Chairman*

395. I should like very much to welcome Lord Whitelaw. He needs no introduction. He has an unrivalled parliamentary and governmental experience, not least as the Chief Whip and much else besides, including being Leader of Another Place, and as a very respected Leader of our own House. The only possible defect which I can find in Lord Whitelaw's biography is that he happens to share with me in Winchester and Trinity, Cambridge, the disadvantages of the education we had together. It really is very good of you, Lord Whitelaw, to come before us. You are a busy person and we welcome you. I was wondering by way of introduction whether there is anything you would like to add to your response to the questionnaire which we have all read with great interest.

(*Lord Whitelaw*) Yes, there is one major general point. I did of course refer in my original answer to the running of the House as a whole because I believe it is all linked up. I do not believe you can look at the select committees and the rest without looking at what happens on the floor of the House itself. I have, I am bound to say, come to the conclusion that we are

facing a very difficult situation. The House of Lords has always been run on the basis of self-discipline. A great many people have recently come to the House of Lords who of course are trained, I do not think it is unfair to say, in giving lectures, and they enjoy giving lectures, and they give lectures on every sort of occasion. The result is that there is a great deal more time taken than before to carry through the business of the House on the floor of the House. I can only give one example which is very obvious: the repeating of statements is supposed to be, I understand, a few short questions to the Minister who is repeating the statement. I heard one the other day when, at the end of about twenty minutes, the person who was giving these few short questions, which took the whole thing over an hour, said, “And now I come to my summing up”. He is supposed to ask a few short questions; he is not supposed to make a speech and sum up. If you do that, I do not know how it can be changed, but somehow or another it means that so many of the decisions that are taken in the House, such as where you have standing committees, and what time they sit, depends on a House which is really being pressed to sit a lot of the time for really very long hours, much

27 November 1991]

THE RT HON VISCOUNT WHITELAW, KT, CH, MC, DL

[Continued]

[Chairman Contd]

longer than they ever used to be. I was as guilty as anybody when I was Leader of the House in having too big a programme thrust on me by the Government, but it has got worse and not better, and I do think it is as bad as could be done.

Chairman] Lord Whitelaw, I must confess that I agree very much with what you have just said and what you said in your evidence about the number of speakers in debates and the length of their speeches, and about the dangers of this House becoming, to use your phraseology, "a pale image of another place". I think this is just possibly a danger. Our terms of reference in looking at the committee structure of course rather preclude us from going very far in our comments on the general way the House is run.

*Lord Kearton*

396. I think that Lord Whitelaw's remarks give us the opportunity if I may say so to make some comments.

A. Far be it from me if I may say so, my Lord Chairman, to encourage you to pass away from your normal terms of reference. I only make it because I think it is very hard to take decisions on committees, how you work them, without looking at the great background of the House itself.

*Chairman*

397. I think quite a few of us share your strong feelings in this respect. Could I therefore ask, given all your very considerable experience, how in general you assess the value of investigative select committees of both Houses as they have developed over the last two decades or so, both the Commons, having set up in 1979 the whole system of departmental select committees, and indeed our own two outstanding select committees, that on the European Communities and that on Science and Technology.

A. I did not start, when I was in the House of Commons and select committees were first introduced, as I think Lord Pym was first to know, as a great advocate of them initially. I think now I am because I think they have become part of the House of Commons. I do not say they always do very well in the House of Commons because sometimes they are used for party political purposes, and if they are used for party political purposes they are not then good select committees in my judgment. I think on the whole, however, they are going to happen. Many of them do very well and I think if one hears some of the rather authoritative statements of some of the chairmen of select committees on both sides of the House of Commons that they often give on the radio these days, it shows that that is a good development and gives someone who can speak with authority as you might say from outside a Government position, and so I now believe that on the whole in both Houses they have considerable value. I think the House of Lords has a special position for them. The question is how many we should have and how they should be used, but there is no doubt that the House of Lords gives an opportunity through its select committees for peers

who in the main have had long and very distinguished careers, who have great experience in many aspects of our national life, but who do not wish at that particular stage of their lives and careers to get into what you might call the party political part of the work of the House. They do not want to do that. They feel, maybe some of them, like retired civil servants, that they do not wish to get into that business. There are many senior industrialists who feel the same, but they can give very considerable benefit I think to the nation and to this House through for example the work of the Science and Technology Committee and the European Communities Committees, and sometimes the *ad hoc* committees which have been a very great success, much regarded, much read, and I think are very important. They give an outlet to people who have served this House in a way that they would not normally get on the floor of the House, so I am now very keen to see them continue. How they continue and in what way they are changed I have certain views about, which you may come to, but in general I am in favour of them.

398. Thank you very much indeed. I must not hog the questioning but I should just like to pose one more question myself. Your successor I think but one, the present Leader of the House, went out of his way to praise the excellent work of the European Communities Select Committee and also of the Select Committee on Science and Technology, but he did point out what he and some others indeed have felt, that there was a danger of some sort of dichotomy between the work of the House in select committees and the work on the floor of the House. He talked of them becoming, I think I quote his words, independent entities insulated from the wider political life of Parliament. You have touched a little bit on this in the reply which you have just given us, but I am wondering whether you would like to expand on your observations.

A. I think perhaps to some extent that is inevitable because I come back to the people who actually want to do that work because they frankly do not wish to take part in the wider political life of Parliament. There is a danger that these committees could of course go too far down that road if they did not have some people on them as well as people I have been referring to, who actually do want to take part in the political life of Parliament, and they ought to be able I think, working with the other people who do not, to produce the right answers. I think you have to change people round on these committees not too vigorously and not just for the purpose of changing them round. I think very many people are very valuable on a committee and nobody wishes to lose them and it is a great pity if it happens. But I think if you can get the balance right on these committees, and that is a matter for the usual channels, then I think they can perform a very important role and not get isolated. I accept what Lord Waddington says, that it is a possibility. I do not think I have felt it myself but possibly it has become more so; I would not know. I think it has to be understood by Governments that indeed if they have these reports they will get some reports which the Government of the day will not



27 November 1991]

THE RT HON VISCOUNT WHITELAW, KT, CH, MC, DL

[Continued]

[Chairman *Contd*]

like, but that after all is not a reason for stopping select committees, if I may say so. In fact it may well be a very good reason for having them. I have no feeling that there is too much of a danger, but I would just make sure that some people who are engaged in the normal political life of Parliament should have a part on these committees.

399. As an agriculturalist though you would agree that there is something to be said for rotation of crops as a general principle?

A. I think there is always that but I think it is a pity if someone who is a really valuable member of a committee is put off it simply because he has been on there too long. Some people ought to be there a long time. There are others who need to be rotated. That is the way all usual channels work and I should have thought it must be left to them. They must do it.

Lord Pym

400. The structure of our select committees at the moment is to have this substantial one on the European Community and on Science and Technology, and an occasional *ad hoc*. Does Lord Whitelaw think it would be a better balance if we had both those committees but also another committee that could look at either one other major topic per session, or maybe two lesser topics, so that there is more of a balance and committee work is not entirely devoted to those particular subjects?

A. I think there is a bit of history. I think I shall come to show that I rather agree with what Lord Pym is saying. First of all the European Communities Committee has done an enormously good job and for a very long time there is no doubt that the scrutiny of things coming from Europe in the House of Commons has been—I do not want to put it as high as saying it is a disgrace but it has not been very well done. To put it mildly it has been done late at night on the whole and without much care and that has been a great pity. The House of Lords European Communities Committee has built a name up for being good, being looked at in Brussels, being looked at here and read properly, and that would be a great pity to lose that, particularly now with all the problems we face with Europe. It would seem an odd decision to change that back. I think the same goes for Science and Technology which of course at one moment of time I think I might say the House of Commons more or less opted out of this activity and therefore as they decided to opt out of the activity, so the House of Lords very naturally, with a lot of people who knew a lot about it, came into the field and dealt with it.

401. Lord Shackleton is not a member of our Committee, but as you know played a rather prominent part in seeing that we opted in.

A. That is it exactly, the history. In my time I was rather keen on *ad hoc* committees. I have to say that I was not always universally popular inside the Government with some of the committees I chose. I think possibly the one on Overseas Trade did not actually please certain of my Cabinet colleagues, but I thought it was a very good committee and put in a

very good report. But there it was: I can say that now. I was not at the forefront of saying it at the time that it was reported, very obviously. That was held and then I ran into a problem—I do not know how great it is, but I think is a balance that needs to be looked at here. I found after that committee that there was a feeling which the Clerk represented to me very strongly at the time that really I could not put any further stress on the clerks at that time, that there was too much committee work for them to do and that I really could not have another *ad hoc* committee at that moment of time. This is difficult for a Clerk because of course there is a perfectly true answer, that if the Leader of the House for his own governmental reasons does not particularly want some *ad hoc* committee which some members of the House want very much, it is open to him to say, “I am terribly sorry; I have not really got the resources to allow it to go on”. If that is used I understand the Clerk would not like being put in the position that he was actually giving the Leader of the House a let-out for totally different reasons. Therefore I think this question of the *ad hoc* committees does need to be looked at along with the European Committee and the Science and Technology Committee. I do not know what the position is about the staff and the clerks as it is at the present time. I do not know how many resources there are. One is bound to question: has the European Communities Committee’s appetite for business become too blown up? Are they trying to do too much? Have they got too many? Are they claiming too much of the resources? If they claimed a little less of the resources, Science and Technology would claim something no doubt because it has not really grown, as I understand the European side has, and then there would be a place I think for another *ad hoc* committee. Should it be an *ad hoc* one chosen or should it be a committee permanently in post and then given different subjects? On balance I would prefer from my experience to have it not permanently there but put there for a specific purpose by agreement. In the end of course we come to the question of a steering committee, somebody who decides whether that should be a good idea.

Lord Tordoff

402. I was going to ask specifically about a steering committee, whether Lord Whitelaw has any feeling about the steering committee. It does seem I think to some of us that there is a slightly random selection of subjects brought forward, and whether some sort of permanent but not frequently meeting steering committee might be the way of sifting through possible candidates for an *ad hoc* committee.

A. Yes, I think it would. The great problem I think you have in this is that normally to someone who has done a great deal of work inside the usual channels, the Leaders, the Whips—Lord Tordoff would know—in the main I found when I was there I am bound to say that it worked very amicably and I think very well, and it was a committee of its own; and if you want a steering committee there was one made for you. If of course you decide to put other people on to it, very good, but be under no illusions.



[Lord Tordoff *Contd*]

I think we all know committees. If the Leaders and Whips, the usual channels, all come to one conclusion, it is extremely likely that that will be the conclusion that the committee will reach and this raises a question mark as to how many other people you want on it. Do you want for example the two Chairmen of the European Committees and the Science and Technology Committee? One has to remember that they are party pre- and if you have them on the steering committee what will their main aim be but to make sure that they keep the position going as far as the committees they are concerned with? It is inevitable and bound to be. I am not quite clear how this steering committee is made up but I have just indicated some of the difficulties. I think you may consider that that is a somewhat autocratic view of a Leader of the House who perhaps sometimes in these matters liked to get his own way and therefore he knew how to get his own way with the Leaders and the Whips and the more people he has on the steering committee the less he will be able to do so. That may be a good thing. It may actually be a bad thing. I leave the balance as to how you fit that. I think a steering committee is a good idea. I think its membership is much more difficult to work out.

*Chairman*

403. Might there not be, if I could follow up the question Lord Tordoff posed, one way round the difficulty which I think, Lord Whitelaw, you realistically pointed out, with the position of the committee, and that is if the chairman was a widely respected, rather independent member of this House?

A. Yes, I suppose that would be possible, but if I was the Leader of the House I would want to have a very careful, almost near veto. I do not think I would be prepared to say yes, of course, and then be saddled with someone I found it extremely difficult to get on with. I think that would be stretching personalities, making the position of the Leader of the House rather more difficult if that was done, but I do not think that would be necessary. I think it would be perfectly possible to get someone. Then of course the moment you get that person, he and the Leader of the House together would become a very powerful combination. Would that be a good thing? It could work both ways I think.

*Lord Kearton*

404. I was very pleased that someone with Lord Whitelaw's experience wrote as he did. The only thing I was disappointed about was when you were not prepared to see some meaty changes made and drastic action presumably imposed. I think the dangers which you outlined in your remarks equally apply to select committees. In other words by their very success they can in fact go on too long. The investigations can be too much in depth. Everything is grist to their mills. These things are very closely interconnected. Why are you pessimistic about having changes in the way the House works, because I think it is much like you say: it has lost its effect a good deal in recent years.

A. The House in general?

405. Yes.

A. Why am I pessimistic about making any changes? Because I think it raises the whole issue of the composition of the House. A great many people who are sent to the House today, very properly and with a great deal to offer as life peers, feel that they have a duty therefore to speak frequently. Some of them feel they have a duty—and I am surprised at the vigour of that duty—of speaking on practically every occasion for quite a long time. I do not think that is right, but it is self-discipline. If people could be persuaded that it is worth speaking when you really feel you have something to say and not just worth speaking because you like speaking or because you think you ought to speak, having something positive to say is very important. It gets right back again, if you have so many people speaking, to the fact that a lot of people will not put their names down. I am certainly in that category now. I have a lot of other things to do outside the House, committees and things which I do, and quite frankly, if I know it is going to be a huge list I feel very strongly that one ought to stay to the end. I know that I have a diary which will not permit me to stay to the end on the particular days concerned, so I do not consider the possibility of speaking on that basis. I think a lot of peers are getting to that position, quite frankly.

406. I agree entirely. The huge lists are getting longer and it is a fact that the same names appear over and over again, no matter what the subject. Why cannot this be dealt with through Leaders of the respective parties or the Chief Whips? Why cannot people have a quiet word with some of the worst offenders?

A. I think the answer to that, if I may say so, is that the House of Lords in the end works on self-discipline and it is self-discipline. I do not believe the House of Lords is so constituted that it can actually work on what is positively a discipline basis. The moment you get down that road you then have to have a Speaker, somebody who chooses speakers, and all that follows from that. I do not see how you get discipline into people in a House which generally does not have the same disciplines anyway as the House of Commons because as nobody really interrupts people can say exactly what they like. It is almost incredible when one first comes to the House of Lords—I have got used to it now—that people can say absolutely anything and nobody blinks an eyelid, whereas in the House of Commons everybody begins to shout, interrupt them, stop them, get at them, and they begin to learn that it is no good going on like that. But here you can get up and you can sail away and nobody bothers at all how outrageous you are.

407. At the first stage could not one have a debate on the subject?

A. Yes, but I do not think the history of the efforts to try and cut some various aspects of time down has been a good one. If I may say so, what has happened to question time? Question time has steadily advanced and then someone says, "A good idea to have an overall period of thirty minutes". What has happened? It has very nearly become the rule that it has to go on for thirty minutes and some people



27 November 1991]

THE RT HON VISCOUNT WHITELAW, KT, CH, MC, DL

[Continued]

[Lord Kearton *Contd*]

actually believe they must spin out the thirty minutes to keep it going for that time. All the efforts that have been made to introduce some forms of self-discipline have nearly always failed because inherently if you are going to have real discipline I do not see any alternative to having a completely different system, which I do not myself favour because if you are going to have discipline imposed, who is going to impose it, and in the end you are going to have to have a Speaker who imposes it. The House of Commons without a Speaker would be a complete monkey-house for time immemorial. It would be no good; you could not do it. I do not want to see the House of Lords changed like that. Therefore I think you have to accept some, but I wish there was a little bit more, self-discipline.

*Lord Pym*

408. Is it worthwhile or would it be futile on a party basis or a group basis for an attempt to be made to point out the anxieties which the usual channels or the authorities have about the length of speeches and the number of speeches and could some attempt be made to persuade people that shorter speeches and fewer people in each debate would be worth trying?

A. Yes, I think some efforts have been made with a great deal of success. I think the short time, limited debates and limited time speeches have actually been a great success. One hears very good short speeches. One hears others when most of the time is spent by the particular speaker saying he cannot really fit in the arguments in the time that he has. On the whole I think those debates have been very good. I happen to think, as a very topical example, that if the recent debate on Europe, which I think was an extremely good debate, had been done on a limited speech basis it would have been an enormous and really outstanding success on Monday last. It went on, inevitably, too long, simply because everybody went on too long. If everybody had spoken for, say, ten minutes it would have been a remarkable debate.

*Lord Bancroft*

409. Could I make one very brief improper comment revolving around the question of discipline? Lord Whitelaw mentioned in his general opening about his initial scepticism about the House of Commons departmental select committees. I was very interested, appearing as I did for two or three years both before the Public Accounts Committee and in front of the departmental select committees, in the difference between the discipline and the rigour of the Public Accounts Committee on the one hand and the rather rabble, if you like, of the very early days of the departmental select committees. I entirely agree with him there, and I also agree with him that it is very much a question of self-discipline in this House. The question I want to make, namely my improper comment, is to ask: do you approve or disapprove or are you neutral towards what you might call the Rippon proposal for a scrutiny of bills committee, particularly in relation to complicated legislation?

A. I am in favour of it. I will even go further than that. I think I am in favour of some form of scrutiny

of certain bills, perhaps the legal bills, (like Consolidation Bills) being, somehow siphoned away from the generality of bills on the floor of the House. I think I would favour both and I think it would be a great help if it was done.

*Chairman*

410. On the second comment, on siphoning off, do I take it from that, Lord Whitelaw, that you would not be opposed to an experiment to see whether some adaptation of the special standing committee procedure of Another Place would work in this House?

A. I think it might, if it was done to special bills. I think it was Lord Wilberforce who made a speech on the address who pointed out that really how desperately important it was to try and get a great many of the legal bills away from the floor of the House and get them through quickly. I thought that was a very sound point and I hope we can see a way of responding to it. Perhaps as we are talking about standing committees, I should say that I have been known in the past to be very sceptical about an ordinary standing committee such as, of course, we have just had organised today for the Charities Bill. My reasons were quite simple. I wanted to try it, I was very keen. Everybody came along and they said to me, "There is a marvellous bill on pilotage, an excellent bill that is non-controversial. Nobody really will wish to be troubled with this bill." Little did they know, that pilots apparently are extremely controversial and very well organised people. They also managed to organise their own lobby and their own friends, and the result of that was that of course the Pilotage Bill, which was supposed to be a very simple, easy bill, which probably would be passed off in one day on the floor of the House if it had had its go, actually occupied an enormous amount of time, so I became rather sceptical of this. I think I come back to my point. The Charities Bill—I understand the reasons why it has been decided to send it upstairs. Actually I have been involved in the Charities Bill and the charity world, so I am very anxious to see this bill get through at the earliest possible moment. I think it is enormously important for a very large section of the nation and desperately important that we do not have such scandals in charities, misappropriation of funds and so on, which is only too possible, and therefore I hope this bill will go through and give the Charity Commissioners the powers they need. But of course basically I must tell you that I believe again that it will only get through on the present basis—and no bill will go much quicker by going up to the standing committee if there is again a will of the members of the committee to get it through. Maybe in this case, because I know all the parties want to get it through, there is the will to do it. If there is then the self-discipline necessary to get it through, it will work. Again, that system has got to be tried, let us try it—and let us hope very much that self-discipline will apply. Without self-discipline it will not. If there are some people who are determined to talk about some of the more controversial things about religious sects

27 November 1991]

THE RT HON VISCOUNT WHITELAW, KT, CH, MC, DL

[Continued

[Chairman *Contd*]

and the rest, if there are some people that are determined to come to that committee and talk about it, it will not work. I hope to goodness it will.

411. Would you also agree that the ability under the special standing committee procedure of the House of Commons to take evidence on complicated and technical bills, which we have not yet tried, might be very useful with those sorts of bills in our own House?

A. Yes, I think it might well be. I am trying to remember—and Lord Pym will remember it well—the pre-legislation committees that the House of Commons had at one time. They were supposed to do something like that but did not and failed. I cannot remember why they failed but they did fail.

*Lord Pym*

412. Almost killed at birth, I think. Too close to the Government's work in bringing the bills forward in the first place.

A. It does not mean to say that something that you suggest—I just try to remember what those committees did because I remember they failed. What you are suggesting is definitely a possibility and I think well worth considering. Perhaps nearly all the suggestions you have made for spreading the load are

thoroughly worthwhile proceeding with, and I would on the whole be very much in favour of them.

*Lord Dormond of Easington*

413. Why would not Lord Whitelaw think that they might come to the same fate? I think it is generally accepted that the bills that did appear might succeed this time? It is completely different circumstances.

A. Hope springs eternal I think, if I may say so, is about the best answer I can give to that. I do not actually have great faith, but I think it is one of those things that ought to be tried.

*Chairman*

414. Lord Whitelaw, I know you have an early appointment. We are very grateful to you, and I speak for the whole Committee, for sparing the time to come and speak to us and give us your views so frankly and fearlessly. Is there anything you would wish to add?

A. No, I really do not think so, except that I am very strongly in favour of the work of this Committee because I think if we can get our committee structure improved, despite my anxieties about the floor of the House, it will be a very great advantage.

Chairman] Thank you very much indeed.

#### Response to the Committee's Questionnaire by the Rt Hon Lord Aberdare, KCB, Chairman of Committees

I believe that as Chairman of Committees I ought to confine myself to three areas only, and my comments are as follows.

(a) It is essential that the work of the EC and S & T Committees should not take up so great a proportion of the resources of the House as to make it difficult for me to find members to nominate to serve on select committees on opposed private bills.

It is one of my duties as Chairman of Committees to propose the names of Lords to serve on private bill committees. These committees meet throughout the session, but are particularly frequent in the period from Easter to the summer recess. Each committee consists of five members. There may be 10–12 committees a session. They impose a heavy burden of work on those who serve on them, since, unlike other select committees, they sit all day (10.30 am–1 pm; 2–4 pm) for four days a week (Monday–Thursday). Some such select committees may last for between two and eight weeks; a minority take one week or less. I do not therefore believe that it is right to ask any Lord to serve on more than one private bill committee a session. It follows that about 60 Lords a session are needed to undertake this work.

I have been reluctant to ask members of the EC and S & T Committees to serve on private bill committees because of their evident commitment to their own committees, whose meetings clash with sittings of private bill committees. I do not wish to be thought to “poach”. I would however suggest that the level of activity of these two Committees should be such that there remains a large enough pool of working Lords whom it would be possible to recruit to private bill committees without undue difficulty and without detracting from the work in progress of the EC and S & T Committees. I would also suggest that members and former members of the EC and S & T Committees might be less exclusive in their interests and more ready to serve on private bill committees, since their experience of committee work makes them especially valuable.

I would add that the level of activity of the EC and S & T Committees should not be so heavy that Clerks cannot be spared from those Committees for private bill work.

(b) I suggest that the balance between the work of the EC and S & T Committees and occasional *ad hoc* committees may not be satisfactory. The workload of the former two committees should not be such that it makes it impossible to have an *ad hoc* committee whenever it is desired to have one. The House's resources for committee work are not unlimited. The EC and S & T Committees are not the only claimants to these resources. This should be more widely understood. There should always be the potential to run one *ad hoc* select committee within the available resources.



27 November 1991]

THE RT HON LORD ABERDARE, KBE

[Continued

(c) Much time in Committee of the Whole House is spent debating amendments which do not raise great issues of principle and which the Government end up accepting. Many of these amendments are promoted by lobbies or other interests and have been debated in the House of Commons. Often it is known that the Government are likely to accept the amendment or will undertake to bring forward a version of their own. It should be possible to identify such amendments in advance of CWH. Such amendments should be subjected to a pre-SWH stage, off the floor of the House. CWH would then be left for the much smaller number of amendments which raise major issues or matters of political dispute.

Aberdare  
26 June 1991

#### Work of Private Bill Committees if Joint Committee's Recommendations are Implemented

<i>Session</i>	<i>Total No. of bills</i>	<i>No. of bills which would have been subject to new procedures</i>	<i>Total No. of days in Committee</i>	<i>No. of days in Committee of bills subject to new procedures</i>	<i>No. of days in Committee saved</i>
1986-87	23	5	32	18	18 (56 per cent)
1987-88	29	10	43	16	16 (37 per cent)
1988-89	41	15	81	32*	32 (40 per cent)
1989-90	35	18	50	40	40 (80 per cent)
1990-91	28	15	60	37	37 (62 per cent)

\* Excludes Kings Cross Bill which has not yet been brought from the House of Commons where it took 57 days in Committee. It may take at least as long in House of Lords.

#### Examination of witnesses

THE RT HON LORD ABERDARE, KBE, a Member of the House, Chairman of Committees, House of Lords, and MR B P KEITH, Clerk of the Private Bill Office, examined.

##### *Chairman*

415. I should like to express my gratitude to the Lord Chairman of Committees for coming to us. My apologies for keeping him waiting, and I am very glad he has brought with him the Clerk of Private Bills, Mr Keith. Lord Aberdare brings with him considerable experience of the House, both from the ministerial point of view and also, and perhaps above all, as a result of his fifteen years' experience as Lord Chairman of Committees. I think we should also like to thank you for your very helpful and full response to our questionnaire. I would like to ask if I might by way of introduction whether there is anything you would like to add to that response.

(*Lord Aberdare*) Just two things, my Lord Chairman. The first is to say how happy I am to be here and to have my Clerk with me because I have not seen him for three weeks. It is typical of the situation that he has been Clerk to the Woodgrange Park Cemetery Bill and so has been unable to be of any great help to me for three weeks past. That is the sort of situation that we are faced with. The second general point is that things have really rather got worse since I answered the questionnaire. We now have three private bills on the run at the same time. We also have a hybrid bill, the Severn Bridges Bill, which starts next week. On top of these, as you have just been discussing, we have a new Public Bill Committee on the Charities Bill. All these make

demands on peers, on clerks, and on committee rooms. That really is the whole problem in a nutshell.

416. Does that mean, Lord Chairman, that when you said in your evidence to the Joint Committee on Private Bill Procedure four years ago that there was no real difficulty in finding lords to sit on private bill committees, that still obtains or is that now also becoming more difficult?

A. It is I think more difficult because there are such a lot of private bills, with these additional bills, hybrids and public bill committees on top. But the main problem in getting peers to serve is to get the proper balance in the committees. The opposition parties, if I may say so, find it very difficult to find the numbers of peers that we are looking for. A number of them are already taking part in front bench duties for the opposition or else they have outside occupations and they cannot give them up for the rather demanding needs of private bill work, which is four days a week continuously over a period of two, maybe eight, weeks. This is really the main difficulty, getting a balance on these committees. I think we could always stock them with Conservatives and a few cross benchers.

417. As far as private bills are concerned, am I not right in thinking though that, with the introduction of the Transport and Works Bill in Another Place, it will mean, as I understand it a lot of private bills which at present come before both Houses of

27 November 1991]

THE RT HON LORD ABERDARE, KBE

[Continued]

[Chairman *Contd*]

Parliament will not come in future, and will this not greatly ease the problem?

A. It certainly will, yes. It certainly will, when it happens. There is no doubt that taking away the various works bills, the railway bills, ports bills, etc. will indeed make a difference. There still will be a number of controversial bills which are not subject to this procedure, but I am sure the new procedure will indeed be very helpful.

418. I was rather surprised with the evidence which we had—there was a chart attached to it. It looked as if when this new procedure came into operation the load on peers at least would be reduced by something like 80 per cent. It seemed to me a very high figure and I do not know whether that is in fact a realistic appraisal. I think there are something like 60 peers whose time, in the course of a session, is taken up with private bills, and releasing 80 per cent of 60 peers would be a very considerable addition to our peer resources for committee work generally.

A. I think one has to remember that one cannot foretell how many bills are going to be contentious or not. It certainly was a good figure for 1989/90, but as you can see it was not 80 per cent in previous years and I doubt if it will be again. It is terribly difficult to forecast because of the nature of the bills. One cannot foresee which bills are going to require select committees and how long those are going to take until one has got them through their second reading stages.

419. I absolutely understand that. That is the quantum question. What about the timescale? When, with luck, will this alleviation take effect.

A. Assuming that the bill is passed this session, which seems to be the Government's intention, I think it is unlikely that the machinery will be in place for the new bills that would start in November 1992. Our cycle starts in November. Bills for this session have been deposited today, twenty-five of them. I think it unlikely that a new system will be in place by 1992. I would think probably it would start effectively in 1993, but that is a guess.

Chairman] Lord Bancroft I think you were a member of the—

*Lord Bancroft*

420. Yes, I was going to say to the Lord Chairman of Committees that as a member of the Joint Committee I am very gratified by the way in which so many of its recommendations are already being implemented. I wonder if I could ask: are there any other recommendations of that Joint Committee in addition to those which are already embraced in the legislation which have been introduced but which if taken up would give further measure of alleviation on peer time in this House?

A. There is one area I can think of which could be included under the bill. I think you wisely recommended that it should be open to the Secretary of State to bring in other categories of bill within the legislation. Just off the top of my head I think that barrages might be a useful category because we have the Cardiff Bay Barrage Bill in the Commons now. It

is highly contentious and no doubt when that comes up it will cause some trouble. There are other barrage bills on the stocks. They are local works bills up to a point, and I would have thought that there might be a useful opportunity to use the same satisfactory procedures to deal with them too.

*Lord Dormand of Easington*

421. The paper was very depressing just because it was so realistic. The Lord Chairman of Committees has this job to do and we all know the difficulties which Mr Keith has, running round, trying to get people on committees and so on. Assuming that that situation will change, and may I say to the Lord Chairman that we had a senior colleague here at the last meeting who said—these are not his words—generally speaking if Parliament wishes, it shall be done, whether it is resources or whatever, and that was something which I was glad to hear, but I realise it is a difficulty. My first question for the Lord Chairman is: if resources did become available, whether by better use of them because of the new system that is going to take place because of the Transport and Works Bill and all the rest of it, would he think that there could be another sessional select committee? Some people think that foreign affairs is so great, so important these days, that that is something which could be done without duplicating the work of the House of Commons Foreign Affairs Committee. Would he think that, and/or is there is a case, if I can use the right word, for bringing in *ad hoc* committees? It seems to me there are always major subjects which could be the subject of study by an *ad hoc* committee. That is the first question. The second one is: there is a constructive question made in paragraph c) of Lord Aberdare's paper, and that is about amendments which are likely to be agreed by the Government which could be taken, I think you would call it at pre-CWH stage. The question is: is life in politics quite so simple as that? Could we say there are certain amendments which you could pretty well guarantee would be accepted by the Government and could be taken at a pre-stage in order to save time? I am not so sure about it and the Lord Chairman of Committees is probably gathering my doubt on that.

A. On the first question, I have always thought that the House of Lords should have the capacity to set up an *ad hoc* select committee. It should be staffed and have available to it committee rooms and, it goes without saying, peers, whenever it is considered necessary to set up a committee on a special subject that appeared to be important. It has been very valuable in the past and we have had some very valuable *ad hoc* select committees. I am sure that that should continue. I do not think I would go along with creating another select committee on a permanent basis. I think we have just about as many as we can manage at the moment, but I do think we should have the power to have additional *ad hoc* committees.

422. Additional?

A. Additional to the European Communities Committee and the Science and Technology Committee. There should be the capacity to have one more on an *ad hoc* basis. As far as my suggestions



27 November 1991]

THE RT HON LORD ABERDARE, KBE

[Continued]

[Lord Dormand of Easington *Contd*]

about ironing out some of the difficulties in Committee of the whole House go, I find that in the committee stage very often there are probing amendments, or amendments that are misconceived or misunderstand what the bill is about. I also note that very often after the committee stage and before the report stage, the Minister gets together with people on the opposition side who have taken an interest, and they clear up a whole lot of points that they did not understand before. My idea was simply that at an earlier stage, before the committee stage, if the Minister would meet with some of the opposition people leading on that particular bill, a lot of misunderstandings and a lot of difficulties that arise could be got over before we had to grind through committee. That was my idea. It may be politically naive.

423. I am not suggesting that you are politically naive at all, but it does strike me—that was the slight doubt I had about it, Lord Chairman—that it might not be quite so straightforward as the Chairman thought.

A. I accept that.

*Lord Beaverbrook*

424. I would just like to comment on what the Lord Chairman of Committees has just said, and I remember when taking the Copyright Bill through this House some years ago, and I think we were in committee some ten or eleven days—and that was in spite of conducting meetings under my Chairmanship with all parties concerned as described by you, Lord Chairman—and all I can say is that I think we would have been in committee for some twenty days or twenty five days if we had not been able to get everyone to agree to come to such meetings where these matters, probing amendments and misunderstandings, were able to be ironed out and therefore a lot of the amendments that were going to be tabled were withdrawn, and with the result of course that the Bill, although it took a very long time indeed, got through in much quicker order. I wonder whether for bills that are not highly contentious but have some element of disagreement, such as the Copyright Bill had, there could not be some system whereby the Government of the day did operate that system outside the Chamber of the House that could iron out some of these difficulties.

A. I thoroughly agree with what you have said. I would go along with the suggestion which was made about special standing committees for these particular types of bills that are highly technical and where you could get together not only with parliamentarians and civil servants but also people from outside who know the business. I would have thought that would be a useful Bill to put to a special standing committee. Failing that I think something like what you did on that occasion was admirable.

Chairman] Could I just ask a question on that? I am half addressing it to Lord Beaverbrook and half to you. With regard to what you were suggesting by way of these preliminary considerations between interested parties off the floor of the House, including Ministers, do you see that as a purely informal

procedure or would you wish that to be formalised in any way? I do not know whether it was formalised in the case of the Copyright Bill.

*Lord Beaverbrook*

425. In this instance it was informal and therefore really had no ability to govern anyone's course of action, so of course, even though we had sorted out a number of matters in this informal discussion, someone else would come into the House at report stage and take up the point that had already been sorted out, even though it was a misunderstanding or merely a probing amendment. I wonder whether some sort of greater formality within that procedure than we had on the Copyright Bill could therefore help in making sure that these matters, having been sorted out, did not come back again.

A. I would have thought it rather difficult to have a formal procedure because it is the House that has to take the final decisions. An informal body consisting of odd people from round the House would find it rather difficult for them to make decisions about bills. I would have thought it would have to be informal.

426. What I was really moving towards was whether it would make sense to have some sort of system of a special committee to look at these matters prior to the Bill coming to us or between committee and report stages.

A. I think in certain cases it would have to be for technical bills which were specifically chosen because they were suitable for that kind of treatment. I think a special standing committee, which would be a more formal organisation than you had, would be valid.

Lord Kearton] I was going to say how much I valued Lord Aberdare's suggestion that we work in this way. As an assiduous reader of Hansard I have been appalled at the absolute waste of time; it is one of the things which makes the House so dreary in some cases. I think this is a very simple matter of self-discipline which could be started informally at first and which would make a real difference to the work of the House. I think we should take this up with some enthusiasm.

*Chairman*

427. Just so I shall be clear about this, are you advocating in response to what Lord Beaverbrook has put to you and what Lord Kearton has said and what you have said in sub-paragraph (c) of your admirable reply to our questionnaire, that it would be a good thing to run in parallel a procedure by which for certain bills there is this informal procedure operating off the floor of the House, and at the same time we would have the possibility for highly technical and legal bills of referring those bills to a special standing committee, or do you see the two things running together as it were?

A. I think the special standing committee idea is one that would be very welcome. I can see that working very well. It would be an alternative to this public bill committee which we are faced with. I do

[Chairman *Contd*]

not see much merit in that, but I do see a lot of merit in having a special standing committee.

428. With the ability to take evidence before it?

A. With the ability to take evidence, yes. I would put that first choice really. I have dropped my proposal at c) although I think c) might well be useful in the case of certain bills which were not suitable to go to a special standing committee because they were not technical, but where there was still an opportunity to iron out difficulties and misunderstandings before coming to the committee stage.

Lord Pym] Tell me: is that informal meeting between Peers and the Minister a normal thing? It is not peculiar to the Copyright Bill? Surely it happens with virtually every bill, does it not, on an informal basis?

Lord Beaverbrook] Not very often to my knowledge. It slightly depends on the Minister concerned, but I have to say that the only bill I was concerned with where we did it was the Copyright Bill. It is something I noticed that could not be used by Ministers to their own advantage.

*Lord Pym*

429. Absolutely. I think in the Commons it is used very frequently in lots of meetings between backbenchers and Ministers promoting the bill. It seems to me something which ought to be a normal part of the procedure but I think it is very difficult to make it formal; I think I would agree with what you say, but informally it seems to me very desirable. On the question of special standing committees you say yes, we could make reports; I think you said that in an answer, that such a committee could make a report, but could it go further than that and actually have amendments or not?

A. I do not think so.

*Lord Boston of Faversham*

430. Could I ask for further clarification from the Lord Chairman of Committees about his, if I may say so, very attractive proposal for these informal meetings? Would I be right in thinking that the meetings envisaged as explained just now would be between Ministers and Peers on all sides of the House and would therefore, since they were going to be informal, were not going to lead to any sort of formal report of any kind, not need to be serviced by clerks of this House? It would seem that the sort of meeting which Lord Beaverbrook had on the Copyright Bill for example did not need that sort of servicing and therefore not only would it be very attractive and possibly save a great deal of time on the floor of the House, but might save resources as well?

A. I would think that is absolutely right, yes. I do not see why there should be any clerks present. There would be civil servants, no doubt.

Lord Beaverbrook] Yes, in my time there were civil servants.

*Lord Boston of Faversham*

431. The one thing that sort of procedure would not get over of course would be the need, for some members and also some outside interests making representations, to have something on the record. That would be the intention of a lot of members in taking part in the various stages on the floor of the House of course, and they could not overcome that, but it could cut a great many, it seems to me, other corners.

A. I think it would, yes.

Lord Beaverbrook] Lord Chairman, I just want to make a point about what Lord Boston has said, about having things on the record of course being very important, but I think what we managed to do with the Copyright Bill was that, although people still wanted to get something on the record, our meetings enabled them to do it very much more quickly.

*Chairman*

432. That is very helpful. Can I just ask a question on resources? You have spoken about the considerable resources which had to be devoted to manning private bill Committees, both peer resources and clerk resources, and of course there are very considerable resources indeed which are devoted—both peer resources and clerk resources—to select committees at the present time, the European Communities Committee and the Science and Technology Committee. All the evidence we have received bears out the high standing of those two committees. What is I think puzzling some of us, whilst we fully endorse what we have heard and it only reinforces our own experience of the worth and high value of those two select committees, nevertheless if we are going to recommend that there should be the ability of this House to mount once a year or whatever an *ad hoc* select committee, if we are going to have the ability to go down and at least try and experiment with the special standing committees, let alone the question we have not yet put to you of the Rippon type of select committee, this is going to impose a drain on resources which might be impossible to fill. Do you see any possibility yourself, speaking from your wide experience, without in any way impairing the effectiveness and standing of the European Communities Committee and the Science and Technology Committee, of any way in which they could release some at least of the peer and clerk resources which they at present require?

A. I think it is rather a difficult question you ask on clerk resources. I think you should ask the Clerk of the Parliaments. Undoubtedly if there was less call on them from the European Communities Committee and the Science and Technology Committee it would release a certain amount of clerk power to other purposes. It would also of course help with the committee rooms. I am not so sure about peers, that is the trouble. There are a great many Peers who serve on the European Committees and on Science and Technology, who, even if they were not serving on those committees would still not be able to



27 November 1991]

THE RT HON LORD ABERDARE, KBE

[Continued]

[Chairman *Contd*]

give up four days a week continuously to serve on the private bill committees.

433. They might though be able to serve on an *ad hoc* select committee?

A. They might be able to serve on an *ad hoc* select committee, yes, but from the point of view of private bills, I think there are not likely to be quite so many people as one might imagine. It is impossible to say how many could serve, but only the other day I saw a very distinguished Labour Peer who said to me he was very interested in serving on private bill committees and I said, "Well, that is just what we need", but then he said, "But of course I could never come on a Wednesday". That was the end of that. There are people who are quite willing to serve but it is very difficult to find those who really have the time.

434. We have talked about peer resources; we have talked about clerk resources. I was wondering about accommodation resources. We have had a note on that matter. If we were going to advocate the ability to man, say, one a session, an *ad hoc* select committee, to have an experiment with select committees on legislation, and to have a Rippon select committee, how would that equate to our accommodation resources?

A. I think a lot depends on the magic No. 7 Millbank, which no doubt you know about. If we did get hold of the third floor of 7 Millbank it would produce more committee rooms. As things are it would be quite hard going I think, but we have always got by somehow and I think Black Rod has given you a summary of the committee room situation, where there is a little bit of leeway on Mondays.

*Lord Bancroft*

435. Could I ask on a totally unrelated point if the Lord Chairman of Committees is aware of the suggestion that there might be some form of steering committee which would review and have an overview of the committee activity and perhaps judge and make recommendations as to what an *ad hoc* committee might study and so on? I wondered whether he had any views on this possible rival to his own activities?

A. I would fully support that. I think it is a very good idea because it would carry on the work that this committee is now doing without the need for a further examination. I think it would be very useful indeed.

436. I wondered whether the Lord Chairman had any notions about the composition of such a committee.

A. I have given deep thought to this. I think an ex-Leader of the House would be admirable, that sort of status of person would be quite excellent.

*Lord Dormand of Easington*

437. Presumably Lord Aberdare heard Viscount Whitelaw's reservations and, if I may say, astute political observations on the composition and Chairman of that committee.

A. I did not hear that. I spoke without knowledge of what he said.

*Chairman*

438. We hear what you say, Lord Aberdare. I would only like to ask one further question myself and that is what I think is now called the Rippon proposal for a select committee to scrutinise bills. As you know, we have sent one of the members of our Committee to Australia to look at this with one of the clerks and I was wondering what your view is of that proposal.

A. I am not really very convinced about its usefulness frankly. When we get to the committee stage of all these bills we are always reminded of the Government's proposed powers for delegated legislation, if not by Lord Rippon himself, at least by various other noble Lords. It would have no powers presumably. It would only be able to direct the House's attention to various parts of the bill that seemed to be taking unnecessary powers. I am not very convinced about that. I personally think that if we really are determined to look at the vast amount of secondary legislation that there is, and there is far more secondary legislation than there is primary legislation every year, I would have thought that Parliament should set up a committee like the Joint Committee on Statutory Instruments, only with much wider terms of reference. The present Joint Committee on Statutory Instruments is only really concerned with drafting. If some other committee were able to look at statutory instruments and determine whether they really were necessary or whether their powers were too great or whether they were misconceived and draw attention to that, I would have thought that was a more effective kind of committee than this rather general committee looking at the legislation before any orders have been made under it. That is only an idea I throw out. It is just a thought. It would be a tremendous undertaking, I realise that.

*Lord Boston of Faversham*

439. Lord Chairman, we explored with Lord Rippon last week the possibility that perhaps the existing Joint Committee on Statutory Instruments might have its terms of reference expanded to an extent so that it could accommodate this scrutiny as well, and as the Lord Chairman of Committees has explained just now, the existing Statutory Instruments Joint Committee only looks at whether instruments are *intra vires* or *ultra vires* and is not allowed to look at the merits of course, but he seemed to feel that that would not be the appropriate body to do it and rather I think hankered after the idea of this House itself having sole responsibility for a scrutiny committee of that kind. I wonder whether, having had further thoughts or reflection, the Lord Chairman of Committees might feel that it is possible perhaps, since these are matters which touch on the responsibilities of both Houses very keenly, there is something perhaps to be said for a further look at whether the Joint Committee might embrace these matters as well?

[Lord Boston of Faversham *Contd*]

A. I am not sure that the present Joint Committee would be the right people to do it. I think they do a useful job, a legal job, very well, but I think it would have to be a rather different sort of committee if it was going to go into the pros and cons of the instruments themselves. I do not know that I think it should be the present committee with expanded terms of reference. I think it would have to be another sort of committee differently constituted.

*Lord Boston of Faversham*

440. Certainly one very considerable obstacle would be the volume of work which the present Joint Committee has with the vast number of instruments

which it has to get through in the course of a year and really would not in practical terms have the time to do anything else as well.

A. No, I think that is very true.

*Chairman*

441. If no other members of the Committee have any questions they would like to put to the Lord Chairman of Committees, I would like to thank Lord Aberdare very warmly indeed on behalf of the Committee for very helpful evidence. Thank you very much indeed.

A. Thank you very much. You are a very useful Committee.

### Response to the Committee's Questionnaire by The Lord Henderson of Brompton, KCB

My views on your particular questions are:—

#### 1. GENERAL

- (a) The balance needs redress in favour of the occasional *ad hoc* Select Committee which otherwise is squeezed out or mounted at the expense of the European Communities and Science and Technology Committees. The House should be staffed so that both the sessional Committees and one *ad hoc* Committee can be mounted in a session together.
- (b) The provision for servicing one *ad hoc* Committee per session should include any proposed Joint Select Committee.
- (c) Yes. A limit must be put on human and financial resources. This limit should be provided by the restriction to one *ad hoc* Committee per session in addition to the two Sessional Committees.
- (d) Resources of staff should be increased as recommended in 1(a), (b) and (c). There is little difficulty in finding Members of the House of the appropriate quality to serve on *ad hoc* Select Committees.
- (e) Major reports from Select Committees should be given more prominence on the floor of the House. Perhaps Wednesdays should be allocated for Select Committee Reports in the arrangements made between the parties for Wednesday debates. There should not be an automatic presumption that all Select Committee Reports ought to be debated.

2-3. The work of the two Sessional Committees is admirable. The method of work of both Committees has, necessarily, changed over the years and will, presumably, continue to change as each Committee thinks fit subject to the agreement of the House.

- 4(a) No, except in times of acute legislative congestion and then only in the case of politically non-controversial bills. The procedure should be retained as a safety valve but not resorted to on a regular basis unless staffed on a regular basis which would be unacceptable on grounds of cost alone.
- (b) There is a case for an experiment with one politically non-controversial bill on the lines recommended by the 1977 Practice and Procedure Report. But in the absence of significant enthusiasm for those recommendations such an experiment might well be a waste of time. I am inclined to think that the 1977 proposals have much merit in them for a reformed second chamber but not till then.

Henderson of Brompton

30 June 1991



## Examination of witness

THE LORD HENDERSON OF BROMPTON, KCB, a Member of the House, examined.

*Chairman*

442. Lord Henderson, welcome. I apologise for keeping you waiting so long. We have received very useful evidence both oral and in writing from insiders, from the Clerk of the Parliaments and from the Reading Clerk. I think we are now very glad we are now about to hear the views of someone who has not only a long and intimate experience of the internal workings of our House, but also who is now an active and involved working peer and can bring us a view or so from outside in as it were as well as from the inside. Thank you very much for sparing the time to come before us. I was wondering whether by way of introduction there is anything in general you would like to elaborate on what you have already put to us in your response.

(*Lord Henderson of Brompton*) Thank you very much, Lord Chairman, for asking me and I am very happy to try and talk to the Committee. I deliberately gave a rather concise answer to your questionnaire and I am very happy to expand on it. I would like just to say two things which are related really. Within the scope of the legislative programme, which is the imperative which drives Parliament, I think we ought to try and reduce the party political element and opt out certain categories of bills rather like the consolidation bills have been opted out of the party political battle. They have an immunity which gives them the possibility of getting through without being obstructed within the political ring. I would like to extend that immunity—which I may say the consolidation bills used not to have; it took about fifty years before they got the present immunity—to the more non-controversial bills in the Government's programme and the Government would not lose credit if they had to jeopardise those bills and leave them over from one session to another. In that category I would put most but not all of the law commission bills. I think a lot of Law Commission bills are controversial, alas. I mean, if there were a Law Commission bill on marriage and divorce I doubt if that would be a suitable candidate, but a bill like this session's bill, the Charities Bill, would be an admirable one to enjoy party political immunity in the way that consolidation bills do. I think that is one of the most important ways of economising on parliamentary time. The other thing I would like to see is more pre-legislative effort, which I know had an unsuccessful experiment in the House of Commons, but it really could be done and I think it would make it possible for the Houses to make better use of their time. It is after all rather ridiculous that both Houses spend more time than any other legislature in the world and do not produce the most perfect legislation, so something ought to be done to relieve the burden on the floor of the House and I think pre-legislative scrutiny is one of the main ways of doing so. Indeed we do it to a certain extent by our select committee system. For instance Lady Faithfull submitted small charities to a Select Committee which produced a report under Lord Brightman which was

brought in and passed with very little difficulty. The same was true of abortion. That was a bill which was considered under a different name, Infant Life Preservation, under Lord Brightman's chairmanship, and it was adopted *in toto* by the Government in the Embryology Bill. The third is the Committee on Murder and Life Imprisonment. The Government had a very good opportunity if they wished to adopt their recommendations, but of course the Lords' amendments were disagreed to in the House of Commons. Nevertheless that was essentially pre-legislative scrutiny. I think that is all I really wish to say.

443. I am not quite clear how this immunity would work.

A. It works in the case of Consolidation Bills. It really is so that they can be, I think I am right in saying, if necessary re-introduced in the following session if they have not completed their career in the first session, but most importantly they are sent to a Joint Committee on Consolidation Bills and it is agreed that the certificate so to speak that is given by the Joint Committee on Consolidation Bills is accepted without demur in both Houses of Parliament and so they are exempted from the party political battle.

444. On the second point that you have made of pre-legislative scrutiny, I think you referred, Lord Henderson, to both the Infant Life Preservation Bill and to the Murder and Life Imprisonment Bill. The pre-legislative scrutiny in those cases took the form of select committees.

A. Certainly.

445. Would you envisage that type of procedure being adopted for pre-legislative scrutiny? I am very bad on terminology here.

A. Why not? If it was so successful in those two bills and in the case of small charities, I would have thought that the Government might like to float some of their more non-controversial bills before select committees in advance of legislation. It is one way of putting it. There are three very good examples in recent years. They were on private members' initiatives, but still.

446. You are suggesting that the Government might deliberately use this procedure as well as having been adopted by private members.

A. I would say that it is a possibility, yes. I do not see why not.

*Lord Pym*

447. Would it not be only to a very small proportion of the legislative programme? There may be one or two in a session but the great majority of bills would not fall in that category, would they?

A. No, I would agree. I am not suggesting that they would, but there are nevertheless quite a significant number, perhaps two or three a session, and that would relieve the parliamentary programme.

[Lord Pym *Contd*]

448. Slightly, yes.

A. No, it is not a great reform but it is something that I should like to see.

449. A contribution?

A. It is a contribution.

*Chairman*

450. More generally, Lord Henderson, I think we would all be very glad to know what your views are as to the main and major contribution which Lords select committees make at the present time, and also I would very much welcome your comments on the view which has been expressed to us both in writing and sometimes in oral evidence that whilst select committees are in most respects admirable, there is some danger of a dichotomy growing up in the House between the work which is done in committee and the work on the floor of the House. On the other hand one heard a view, and I do not know whether you were here when Lord Whitelaw was giving evidence, but he expressed the view very clearly and forcefully that that may be the case but you can get peers who are eminently suitable as members of committees who do not have the inclination or the desire to enter into the more political work of the House as a whole. What are your views on this?

A. I would agree with Lord Whitelaw. I did hear what he said. I thought he had it exactly right. The fact is there are a lot of members of this House who are still very busy outside and who are prepared to come and make time in their diaries for select committee work but have not got time for the general work on the floor of the House. But they also, as he said, may not have the inclination either, and the fact that there are two types of peer in the House, the more political and the less political, is neither here nor there. It does not matter very much. I think it is a great strength that the less political learn something about politics and the more political learn to be perhaps less political when they come to this House.

451. I think your opening remarks were to some extent addressed to the value of *ad hoc* select committees dealing with pre-legislative matters, but of course there are other forms of *ad hoc* select committees as you are very well aware. I think you also referred to the possible need to redress the balance in favour of the occasional *ad hoc* select committee which otherwise is squeezed out. As you well know, those two admirable committees on the European Communities on Science and Technology do make a considerable demand on peer and clerk resources. I was wondering how you feel we can meet what is I think a very real desire expressed both in evidence to us and elsewhere for the ability not only to set up the occasional *ad hoc* select committee but also perhaps to do some experiments given the demand on resources made by these two major and highly valued select committees.

A. I feel that the staff of the House ought to be so arranged that it can meet the legitimate demands of the House. I think it is really inadmissible, and I am sure that Leaders of the House and Clerks of the Parliaments have felt it very embarrassing, that very

well worthwhile projects for *ad hoc* committees have had to be turned down for inadequate staffing and that ought to be remedied, but I do not think it ought to be remedied at the expense of the European Communities Committee, particularly now and for the foreseeable future, or the Science and Technology Committee. I mean to say, we are in a highly important time for the European Communities Committee to be acting and I should have thought until new arrangements are made—especially for perhaps the European Parliament to have more powers than they have, but also in the national interest if not the interest of Europe—as a whole they should carry on at their present pace I think. I do not see that there is any fat there. It might be that they could adapt their procedures a little and themselves have an *ad hoc* committee and perhaps combine one or two of their sub-committees. That sort of adjustment is certainly worthwhile but not to diminish their activity, I should not think.

*Lord Kearton*

452. Is it immutable that the resources of the House, such as specialist clerks, could not be increased?

A. They could be increased. There are a number of different ways in which they could expand but yes, I think they should be.

453. Perhaps I could ask Lord Henderson in view of his enormous experience: do you think the general self-discipline of the House is deteriorating?

A. I think it is always deteriorating and always needs a little discipline injected into it, and I think all successive Leaders of the House have subscribed to that, and I think it is about time it had another jolt. It is the same with ministerial answers. They ought to be short but they get longer and every now and again the Leader has to discipline the Ministers in the same way. It is—I hate to say it—ongoing.

454. We had evidence in the early meetings of this Committee from outside, to say that House is really now more respected for its select committee work than for its general work.

A. It is more widely known for that, yes. Nevertheless, I would say that the number of occasions I have had people from outside coming to me and saying, “How is it that we are able to get amendments”—from lobby groups—“in the House of Lords and we cannot get them in the House of Commons?” and I find it rather difficult to answer. We have a high reputation amongst those who are concerned with legislation for obtaining amendments which it is absolutely impossible to get in Another Place.

455. That may be a reflection that more members of the House of Lords are subjected to more lobbying from special interests than an MP.

A. Members of the House of Commons are subjected to the same lobbying. I do not think that can be the reason.

456. It has certainly increased dramatically.

A. Oh, it has, it certainly has.



27 November 1991]

THE LORD HENDERSON OF BROMPTON, KCB

[Continued]

[Lord Kearton *Contd*]*Lord Dormand of Easington*

457. Lord Henderson knows that we have been concerned—indeed he has touched upon it—about peer and other resources and in his answer to the questionnaire he said that the House should be staffed so that both the sessional committees and one *ad hoc* committee can be mounted in the session together. I get the impression that that implies that they are not sufficiently staffed.

A. They are not, no.

458. That was the question I wanted to ask. In that case I wonder if, on the basis of his experience, what action can be taken to ensure that what some of us would regard as an absolute minimum for select committee work in order that that can be done. I think you probably heard me say that we heard a very senior member of the House who said to me last time that if the House so wills it, that will be it, and I expressed a little bit of political reservation because as soon as the Treasury becomes involved there is, and very properly, a hand put on it to say, “Well, is this necessary?” Could Lord Henderson say something about how we might do something about that?

A. If this Committee recommends that the House should have the capacity to staff an *ad hoc* committee in addition to the Science and Technology and European Communities Committees, it would immensely strengthen the authorities, who would be the Clerk and the Leader of the House, in extracting a sufficient amount of money to resource the increase. That is the best way of going about it.

459. Any other way?

A. This is as good a way as any, if I may say so.

*Chairman*

460. I think you have also suggested, and I may be wrong about this, that there are ways by, for example, having recourse to more special assistants or special advisers, by which the call on clerk resources can be perhaps diminished to a certain extent, and we have had quite a lot of evidence, not least from the Select Committee on Science and Technology, to that effect.

A. Yes, that has been done for a considerable time in both Houses.

461. It is helpful from a career point of view. Is that not so?

A. I do not know; it might be difficult. I think you do not want to increase your establishment unless you absolutely have to because you want economical staffing, for goodness' sake, and so you will always have to make flexible use of outside resources, whether you are going to have any more committees or not. We are already doing that. Certainly we were in my time and I expect it is being done now. It would not necessarily mean the addition of a permanent clerk. It could be expanded by use of some retired people sometimes from the House of Commons clerks or the House of Lords clerks, or civil servants can be brought in on an *ad hoc* basis for an *ad hoc* committee.

*Lord Bancroft*

462. Could I ask Lord Henderson on rather a different point a question about the steering committee which you heard me ask a previous witness. Do you have views on that?

A. I think possibly the time has come for a steering committee, yes. It would be helpful for sorting out priorities in both the Science and Technology Committee and the European Communities Committee. I do not think it should meet too often, otherwise it would require staff power in setting up a new committee. If it was only, perhaps, once or twice a session it would not be very expensive in those resources. I am slightly reluctant myself to diminish the role of the Leader of the House, who has a very special place, a very important place, in the running of the House, and if the Liaison Committee in any way diminished his authority I should be sorry. It would be a very sad thing if that happened.

*Lord Pym*

463. Do you think he ought to be Chairman?

A. I think he ought to be Chairman.

*Lord Kearton*

464. The opportunity of having Lord Henderson here is too good to miss in the sense that we may be recommending that we have more committee clerks. The standard of the committee clerks is so extraordinarily high. It is generally accepted that one reason why committee reports are so good is because of the excellence of the committee clerks. How are they chosen and is there a limitless pool?

A. We are very fortunate to have the services of the Civil Service Commission and our people are recruited through their good offices. I am very glad to hear what you say, naturally, about the quality of the staff. It is not a question really you should ask me because I am not up to date but I think there are perhaps sufficient applicants for us to be able to choose the people.

465. Is there an interviewing committee in the House of Lords who interviews these people?

A. Yes, the Clerk of the Parliaments and anyone he designates, but the main interviews are done by the Civil Service Commission.

466. They provide a short list?

A. Yes.

*Chairman*

467. You mentioned in your reply to our questionnaire, Lord Henderson, that lately not a great deal of enthusiasm has been expressed for our trying again the recommendations of the Practice and Procedure Report of 1977. In fact in most of the evidence which we have had there has not been a great deal of support for that. You also said though that in a reformed House this might be worth looking at again. I would welcome any comments you might have on that and also on the related question as to whether, if we are not going to go down that route

[Chairman *Contd*]

and if there is not vast enthusiasm just now for public bill procedure, there is not something to be said for at least trying an experiment in special standing committee procedure which has worked well although it has not been pursued in Another Place.

A. Yes, I think that is quite a good idea. We could perhaps follow the House of Commons. It would have to be very strictly time, limited because of the imperative of the parliamentary programme. Incidentally it is really that imperative which scuppered the 1977 proposals. The 1977 proposals were interesting because a lot of water has flowed under the bridge since then but there were no departmentally related select committees in the House of Commons then. The two main select committees in our House, Science and Technology and European, had not been heard of. It was very much a pioneer effort and I think there is a lot of good in it, but the main reason why it would not do I think is because the House is part-time. You heard the Lord Chairman say how difficult it is to try to man the private bill committees. It would be just as difficult to man that kind of committee, as recommended in 1977, as private bill committees, because the peers are part-time and can only fit in duties to the House with their other commitments outside. I would think that it would be worthwhile having an experiment on the lines of the House of Commons provided it did not interfere with the parliamentary timetable. I think perhaps it should be an experiment starting with a bill which starts in the Lords and one which, like the Charities Bill, is not controversial in party political terms.

468. I think you will have heard what Lord Whitelaw said about what I roughly term the Rippon proposal, which he rather favoured.

A. Yes.

469. You also heard what Lord Aberdare said about it, who was inclined to be rather dismissive of it. I was wondering what you feel yourself.

A. I did not actually attend the debate; I read it, and I was very interested in it. I think perhaps the time has come has come to have another

Donoghmore type committee. This is not a problem of one House. It is a problem of both Houses. It is significant that the present Committee on Delegated Legislation is a Joint Committee. I would recommend another Donoghmore type Committee. One would hope that they would recommend something which would be pursued by a Joint Committee of both Houses. I think it is certainly time that this took place and that is the way I should like to see it.

470. Would that suggestion be for a joint enquiry?

A. I would hope so. The Commons are not always eager to join with the Lords, but preferably a Joint Committee.

*Lord Boston of Faversham*

471. Could I go back a stage or two with one question on clerk resources. Lord Henderson said earlier that there might possibly be scope for a modest amalgamation of the sub-committees of the European Communities Committee, provided that that did not actually reduce the work that that Select Committee is doing in view of the importance of present circumstances. Does he envisage that if there were to be some modest amalgamation of those sub-committees that would necessarily, whilst retaining the workload that he is anxious to see retained, result in a reduction in the number of clerks servicing the whole committee?

A. I do not think so, because I was envisaging perhaps the amalgamation of as it were the Environment and the Agriculture Committees and that might lead to perhaps a greater load on the other committees, or the establishment of a general *ad hoc* committee on European Affairs and that would take up that clerk's time. It is a little bit rigid at the moment. I think it could be a little more flexible.

*Chairman*

472. Lord Henderson, thank you very much indeed for your evidence, both written and oral. We are very grateful to you.

A. Thank you very much for asking me to come.



MONDAY 16 DECEMBER 1991

Present:

Dormand of Easington, L	Clinton-Davis, L
Jellicoe, E (Chairman)	Elles, B
Pym, L	Plumb, L
Thurlow, L	Richard, L
Tordoff, L	Serota, B
	Shackleton, L

#### Examination of witnesses

SIR CHRISTOPHER PROUT, QC, MEP, Chairman of the European Democratic Group, European Parliament, and MR RICHARD CORBETT, Senior Adviser on Institutional Affairs of the Socialist Group, European Parliament, called in and examined.

#### *Chairman*

473. Sir Christopher, I would like to extend a warm welcome to you and Richard Corbett. It is very good of you, as Chairman of the European Democratic Group in the European Parliament and senior adviser to the Socialist Group, to come and give evidence to us since I know you are an extremely busy man at the present time. I hope we may have the chance of talking with your leader when we visit Brussels. I do not know whether this will be possible or not, certainly we would like to. Apart from Members of the Committee we have two former Commissioners with us, Lord Richard and Lord Clinton-Davis. We also have Lady Serota, the Chairman of the European Communities Committee, who has managed to recover from an accident last Saturday when the ice was too much for her balance and she has had no less than nine stitches in her arm; it is particularly good of her to come. It is good too to have Lord Plumb, a former President of the European Parliament and Lady Elles, a former Member of the European Parliament with us. I hope that any of our, as it were, visitors around the table will not hesitate to come in on the questioning if there is something they would like to ask of Sir Christopher. That said, Sir Christopher, to kick matters off, what in general do you feel is the impact and influence of the reports of the Committee, the European Communities Committee, which Lady Serota so ably chairs?

(*Sir Christopher Prout*) Thank you very much, my Lord Chairman. Well, it is difficult to give a scientific answer to that question. I can only go on anecdotal evidence. On the basis of that kind of evidence, I think not just the reputation of the House of Lords' Scrutiny Reports but also I think the influence of these reports is very considerable in the European Parliament. Not just amongst British Members. I think that conclusion applies to members of all nationalities and, dare I say it, all political persuasions. I think there are, perhaps, two reasons for this. First of all, because I think the choice of subjects that the House has made has, generally speaking, been a good one. You have usually managed to put your finger on the most important issues that are coming up within the European institutions. Secondly, I think one has to say that you take evidence on many occasions from officials who

are deeply involved in taking the decisions. As you well know, my Lord Chairman, one of the big problems we face in the European Community is that most of the important decisions are taken behind closed doors by officials, not in public by parliamentarians. It is extremely difficult to find out exactly what is influencing those officials unless they are, for one reason or another, appearing in public in front of a committee run by their own national parliaments and asked to give an account of themselves. So I suppose it is really only when we are able to read the evidence they give to a committee, such as your's—I think perhaps pre-eminently such as your Committee—that we really get to know the mind of the official who is sitting in the working party of the Council, taking important decisions about the future of the European Community.

474. Thank you very much indeed. Could I follow that question by asking you what type of report of the European Communities Committee you and your fellow members find most useful? Is it the specific proposals arising from the Committee's scrutiny function or is it perhaps more the in depth reports on broader issues? When the Minister of State, Mr Garel-Jones, gave evidence to us he singled out those more in depth reports as being on many occasions particularly useful, certainly to him and his Foreign Office colleagues. He instanced, for example, the Economic and Monetary Union and Political Union Report, which was debated earlier this year, the report on reform of the Common Agricultural Policy and a report on the staffing of the European Community's institutions. I was wondering if you had any preference yourself?

(*Sir Christopher Prout*) Yes, I also take the view that, over the last two years at any rate, the most influential reports made by the Committee have been the in depth broader reports rather than the individual scrutiny reports. Now, I say that from my vantage point. There may well be individuals and corporations who are involved in some particular activity who have found particular scrutiny reports of crucial importance to them in pursuing their own interests. I speak, therefore, from my own vantage point; but from my vantage point I have little hesitation in saying the most important and influential reports from my point of view have been the most general ones. I think it is important to focus

16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Chairman *Contd*]

on this question of point of view. As I understand it, one of the functions of the Scrutiny Committee is to scrutinise legislation from the point of view of Your Lordship's House. Your focus, therefore, is often very different from the focus of members of the European Parliament. Our focus is on the Council of Ministers and the European Commission. Your focus is on the behaviour of a component part of the Council of Ministers, which is the responsible Minister who goes in to bat for his country, in our case for the United Kingdom. I have always thought that the description "scrutiny" was a misnomer because the role of national parliaments in the legislative process, the European Community's legislative process, is an indirect one. You are not directly involved in the making of legislation. Your task is to control the people who are directly involved in the making of legislation. Therefore, it is my impression that the crucial interest is, in a sense, in finding out what is in the mind of the minister who is representing his country and trying in one way or another to influence his behaviour. So I think before one talks about usefulness it is quite important to ask "for what purpose"?

475. I should have perhaps have made it clear that if Mr Corbett has anything to add on these general points he should not hesitate to do so.

(Mr Corbett) Thank you, my Lord Chairman. I concur with what Sir Christopher has said. I would just add that the impact of the reports that you and your Committee produce is indeed very wide in the Community. It has often been my experience to find in the office of a desk officer in the Commission a House of Lords report on the subject with which he or she is concerned. The fact that you collect and print the evidence that you receive is what is particularly useful and if you compare it to the situation that the European Parliament faces, you have the advantage of working only in one language. When a European Parliament committee collects evidence, it is often difficult to print verbatim the full evidence received because of the sheer cost and effort of translating and printing in nine different languages. Now, your own reports of course are limited to one language, but it happens to be, the language you have chosen, a very good language in that it is one quite well understood throughout the Community. There are, of course, some Members of the European Parliament, officials in the Commission or Commissioners themselves even who may not be familiar with English and that is the other side of the coin, as it were, the limitation. I would agree with Sir Christopher too on the aspect of officials coming before a committee so there is a complementary role. The European Parliamentary committees often have hearings with officials in the Commission or even the Commissioners themselves, the Commissioners and their civil servants, but you are in a better position to hear the Ministers in the Council and their officials and there I see a complementary role played in the two types of scrutiny exercise by the two respective Parliaments.

Lord Pym

476. Am I right in thinking that the reports you are referring to of this Committee go much wider and deeper and are more comprehensive than those of the other Chamber or any other national parliament in the Community and, if that is right, can you say a brief word about any other important contribution in this area made by national parliaments, and if I am right in thinking that this particular Committee's reports are so much better and more deeply thought out than others, is that the reason why they have a particular influence and does the fact that it comes from only one House of one national parliament in some way detract from its value?

(Mr Corbett) My Lord Chairman, I think that you are right that there is no other chamber of another national parliament or indeed of this country's national Parliament that produces such in-depth reports as your own Committee, in terms especially of the volume of evidence that is published. In terms of the conclusions and analytical parts perhaps of your reports, there are other parliamentary chambers that go into things to that degree. Now, the exact method chosen by different national parliaments varies. There are different parliamentary traditions, of course, but it ranges from the Danish Folketing, the specialist committee of which almost goes to the extent of asking the individual Minister to appear before it on the way to the airport and on the way back from the airport when going to Brussels and which does not publish evidence in the way this Committee does, but exercises very close scrutiny over the Minister in question, to parliaments which have a very much looser and perhaps not very detailed form of scrutiny. *En passant*, I would mention, and we may come back to this matter, that three Parliaments formally involve MEPs of their own nationality in the process in that they have set up committees or sub-committees or organs on which members of their own House and MEPs of their own nationality sit on a parity basis to exercise a scrutiny function. I think the main advantage here is that it enables national parliamentarians to draw on the experience that the MEPs, who are present in Brussels more often, are able to acquire at that level and feed that back into the national political process.

477. The European Parliament has responsibility to scrutinise Community documents. Does that scrutiny go as far as the scrutiny undertaken by the Lords Committee?

(Mr Corbett) I would say that frequently yes, but again not in terms of publishing all the evidence received. The European Parliament committees of course are obliged to look at almost each and every proposal of the Commission, that goes to Council and after Maastricht this will increase. There is, therefore, perhaps a tendency to have to go through too much detail on too wide a range of subjects than might perhaps be desirable. On the other hand, on the issues in which the relevant committee chooses to go into detail, it can call on outside evidence, it can call on Commissioners and their civil servants. MEPs are of course individually in contact with interested groups in their country or in their constituency, with



16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Lord Pym *Contd*]

their own national political parties, with trade unions or employers' organisations and whenever there is an important issue you can be sure that their attention has been drawn to particular points by these various sources of information or indeed pressure that they may be subject to. In that sense there is quite a detailed degree of scrutiny when the relevant committee chooses to go into that degree of detail.

*Lord Thurlow*

478. I have a point on that. In relation to the comments that you get and the pressures that you get from interested groups, do you, as a United Kingdom Member, find that the interested groups in this country are alert and keep in close touch with you on scrutiny matters?

(*Sir Christopher Prout*) The short answer to that, my Lord, is yes and increasingly so. There is disagreement about the statistical evidence; but some people say that on average as many as 50 per cent of the amendments tabled by the European Parliament end up in the final legislative texts. Now, if that statistic is correct, or indeed if a statistic approaching that were correct, that is an incentive in itself for attracting a wide range of lobbyists to go and talk to MEPs who are responsible for scrutinising the relevant legislation.

*Baroness Elles*

479. Could I put a supplementary to Lord Pym's question? What I really wanted to ask Sir Christopher and Mr Corbett was whether they would agree that the role of the Scrutiny Committee in the House of Lords and the recommendations it expresses are really an opinion from the Committee, a collected opinion, which is put before the House of Lords for debate, whereas the scrutiny committees in the European Parliament have a duty to analyse line by line the legislative texts, so really the outcome of a European Parliamentary committee's scrutiny is quite a different result to the one here and I would not have thought on the question of importance you could compare the two because they are both important, but in a completely different way.

(*Sir Christopher Prout*) My Lord Chairman, of course that is exactly right and it goes back to the question of scrutiny for what purpose. The European Parliament has a constitutional obligation to amend the text and the House of Lords has a constitutional obligation to indicate its wishes to the responsible Minister, or the Government in general, and those two different points of reference produce different sorts of activities in the respective Houses.

*Lord Clinton-Davis*

480. One of the advantages, would you agree, that the European Parliament has is that by reason of its frequent contact at committee level, in particular with Commissioners and their officials, they have an input at a fairly embryonic stage into the Commission's thinking? Would you think that this represents some of the difficulties or even defects of most parliamentary institutions outside the

European Parliament, that it cannot actually influence sufficiently at a really embryonic stage that thinking which is going on before the Commission has adjudicated on a matter, adopted a proposal, and so on?

(*Sir Christopher Prout*) My Lord, you are of course right about the ability of the European Parliament on some occasions to influence the Commission's thinking before the decision on its Legislative Proposal is made. There is, of course, as you know no formal way in which the European Parliament arrives at performing this function. It usually finds it is performing this function because somebody has leaked information to it which it, technically, had no constitutional right to receive. There is, I think, one interesting constitutional question about this under the doctrine of separation of powers. It is sometimes argued that to the extent that the parliament seeks to interfere with the Commission's role in initiating legislation, it is to that extent fettering its political discretion at the wrong stage. Parliament ought to look at the Commission's proposal when it has reached fruition with an entirely independent mind. I think that view is probably changing; and one important aspect of this change has been the decision at Maastricht to make the term of the European Commission coterminous with that of the European Parliament, which I believe ultimately will lead to the Commission becoming politically answerable to the Parliament. This notion of a separation of the two institutions, I think, will begin to fade.

481. My experience in going to Transport and Environment Committees with considerable frequency was I would be asked to disclose my thinking about future policies. That, I would imagine, you will correct me if I am wrong, has been the experience of other Commissioners too. That being so, because of the debates or questions that follow, would you not agree that enables members of the committee who are awake to be able to play some part, maybe not a decisive part, in seeking to influence the way in which the Commissioner is going about his task?

(*Sir Christopher Prout*) Yes, I would agree with that.

(*Mr Corbett*) If I may diverge slightly from the views of Sir Christopher on this. I think many MEPs, perhaps most, would consider it part of their role to stimulate proposals from the Commission, indeed this is one of the things the European Parliament asked for from the Maastricht Treaty reform and has obtained to a limited degree in that it will be able to ask the Commission to bring forward proposals, although there will not be any sanction if the Commission fails to bring forward any proposals. There are many ways, other than leaks, in which members also become aware of Commission thinking at an early stage. As Lord Clinton-Davis pointed out Commissioners frequently share their initial thoughts with members of a particular parliamentary committee before a Commission proposal is tabled and, indeed, before it is even discussed in the College of Commissioners itself.

16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Lord Clinton-Davis *Contd*]

Lord Plumb] I wanted to pose the question Mr Corbett has just answered after Maastricht, and that was what role the parliament will have or will not have and how this role might change and I think Mr Corbett has answered this point. Still following on, and I think it is appropriate we do follow Lord Pym's question on the scrutiny function, Sir Christopher said the scrutiny function, as he saw it, as seen by this House, is basically the position as from the United Kingdom. The one thing that has impressed me as a relatively new boy in this House, and serving on a Sub-Committee considering the reform of the CAP, was that we were seeking evidence from all those who were concerned with the reform of the CAP, that is from far and abroad, for instance getting witnesses from the US Embassy, from people all over Europe. One person who did not appear before us was the rapporteur responsible for the preparation of the CAP package as debated, discussed and decided upon last week in the European Parliament. Having served on four Committees of one sort on reforming the CAP during this last year one does get a little confused at times. The committee here, I think, does an excellent job and came to a very good conclusion and a copy of their report went to every member of the Agriculture Committee in the European Parliament and that gave them an indication of what was being said. The comments I made in the debate in the European Parliament last week were based on the evidence which came out of that particular committee. So I think that does give the sort of transfer of information and knowledge that is important, but the major difference between us is that in that committee work which we did in the European Parliament there were 260 amendments tabled in the Agriculture Committee itself, there were a further 300 amendments tabled last week as it came up for discussion and you finish up with a bit of a dog's breakfast, whereas in this House you come to a conclusion which is put forward and accepted and debated. I feel we will not get the sort of rapport we should be getting between all parties until we find a better way in the European Parliament of determining the end result of those deliberations other than by that massive number of amendments which make a nonsense of the report at the end of the debate.

*Chairman*

482. I do not know if Sir Christopher or Mr Corbett would like to comment on the observations of Lord Plumb?

(*Sir Christopher Prout*) My Lord Chairman, perhaps I could—in a way of responding to the last point Lord Plumb made—turn to the question of focus because I think, if I may be permitted to say so, it will be a question to which this Committee will frequently return as it deliberates. I think the best focused national parliament is the Danish Parliament, if I may say so. The Danish Parliament has looked at its relationship to its own ministers in purely power terms. What the Danish Market Committee wants to do is to make the minister follow its instructions in the Council, full stop. It is not

concerned with producing beautiful, well rounded reports which are of interest to the wide range of people and which influence the general debate. What it wants to do is to influence a particular political question on a particular day at a particular time in a particular place and it has done it extremely efficiently over the years. I think one of the questions that all national parliaments are in the process of asking themselves is whether they want to go down the same road as the Fokelting Committee or whether they want to perform some different function. One of the reasons why I think Lord Plumb is quite right in saying there is a great deal of confusion in the European Parliament is that the European Parliament itself has not focused on what the purpose of its own reports on agriculture really are. I think in particular agriculture is a subject which is very confusing to deal with in the European Parliament because it is one of the few subjects where national divisions are stronger than party political divisions. The political disciplines, which are not in any case as strong as they are at Westminster, certainly not as strong as they often are in the House of Lords, do not operate at all in a subject like agriculture which makes it peculiarly difficult to deal with in a recognisably political fashion.

(*Mr Corbett*) If I may just add, my Lord Chairman, one point which is that in some subjects, notably agriculture, the European Parliament is having to deal with legislative proposals which in many national contexts would be statutory instruments left to the executive branch, but in the Community context go through the full procedure of Commission proposal, debate in the Parliament and then go into Council. When a parliament has to deal with such a volume of technical legislation, and it happens in other areas too, it often makes it very difficult for parliamentarians to deal with the subject in the way that, individually, all of them would perhaps wish to.

*Lord Tordoff*

483. My Lord Chairman, I am a little bit worried that we are getting ourselves trapped into a discussion on the workings of the European Parliament, but it is actually the interface between the European Parliament and our Select Committee that this Committee is charged with looking at. I am sure Members of our European Committee would be most interested, as I am personally, to hear the discussion which has been going on, but I wonder if I could bring us back to this interface. It seems to me that one of the things that Sir Christopher has said is that he sees the Commission becoming more responsible politically to the European Parliament. How far will that degrade the usefulness of our Select Committee, does he think, and I am also going to ask him what timescale he sees for that? The other specific question is what use does he see from his point of view for the debates that go on in our House as a result of these reports? He says he likes the broader reports best and I think agrees with Mr Corbett that it is the evidence which is perhaps the important thing so far as he is concerned. How then



16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Lord Tordoff Contd]

do the debates fit into this spectrum of usefulness? Are they taken any notice of at all in the European Parliament, the debates on our reports that take place here?

(*Sir Christopher Prout*) I am very struck by the fact that the most important decisions of the European Community are taken behind closed doors in the form of deals struck between Commission officials and Council officials. The role of officials in decision-making in the Community in relation to parliamentarians, whether you are talking of national parliamentarians or European parliamentarians, is overwhelmingly strong. If I were to make a general statement about the relationship between this House and the European Parliament in the future, I would say that that relationship should be founded on two principles: the principle of complementarity; and the principle of transparency. Now, I believe that as a result of Maastricht, we are going to see over the next five years increasing political responsibility of the Commission to the Parliament. That means that the Parliament will be able to bring what Commission officials have been doing behind closed doors more into the open than before. That must be a good thing for democracy. But it is no good our achieving that objective if the same process is not going on with the officials in the other 12 camps, or however many camps there will be in five years' time I conclude, therefore, that the single most important function that national parliaments and the committees of national parliaments can perform is to bring into the open the work of the national officials; because unless you can see what both officials are doing, you will not get a clear picture of what is going on. The milk quota saga may be an illustration that would help your Lordships in seeing what I mean by what I say.

484. Is it not, however, more a function of another place to carry out that sort of scrutiny of departments and their officials rather than for a committee of the House of Lords which inevitably wants to look at a broader canvas?

(*Sir Christopher Prout*) My Lord, the House of Lords, as I understand it, is a House which has legislative responsibilities and Ministers of the Crown responsible to it. Many of those Ministers are responsible for important activities in the European Community, it is, of course, for your Lordships to decide what you wish to do but to the extent both that those statements are true. I would have thought the principles I have just outlined apply to your House equally as well as to the other place.

(*Mr Corbett*) I would just go so far as to say that the secrecy which certainly applies at the level of officials carries on right the way up to the level of Ministers in that the Council is the only legislature which adopts binding legislation—the only one in Europe nowadays—which does so behind closed doors. Of course each Minister comes out and says what he or she has done straight out of the meeting to the press, but in Brussels now we have the television channels of eight Member States and if you watch the news after an important Council meeting and you flip around from one country's channel to another, you would not believe they were at the same meeting.

They all put a different gloss on it. The Belgian Minister gives a different version to the Flemish television and to the Francophone television, so there are perhaps 13 different versions! The rather fundamental democratic principle that one ought to be able to see how one's representative acted and indeed voted when adopting legislation does not apply to the same degree as it does at national level. That of course has been part of the European Parliament's arguments for co-decision, that decisions by Ministers in the Council are not enough and they should only enter into force if the decision is also explicitly approved in a public vote in an elected assembly. National parliament scrutiny over individual Ministers being part of that process with the European Parliament scrutiny over Council as a whole (and indeed, as Sir Christopher pointed out, over the Commission) is complementary to that.

*Lord Richard*

485. I must say I do not recognise the Community legislative processes as they have just been described. They have obviously changed enormously for the better since I left Brussels. It was as leaky as a sieve. However, it may not have been a Belgian Commissioner outside the Council chamber because no one knew at all what was going on inside and as for Commission proposal being drawn up behind closed doors and announced to an awaiting public, again I hardly recognise the process which was going on when I was there, nor indeed when Lord Clinton-Davis was there. One example is I remember the Women's Committee of the European Parliament and I felt indeed slightly hounded by them in the sense that every so often I was summoned to appear in front of them and told, "Expose yourself to the assembled company. Let us hear your thoughts. How far are you going to go down this particular track?" so I do not think the secrecy point is quite as dramatic in practice as perhaps Sir Christopher has described. Secondly, whilst I entirely agree that the European Parliament is there to bring greater transparency to the processes and can use its political will to do so, it does seem to me the House of Lords Committee has two strengths: one, in its power to analyse; and, two, it is cross-party. Once you have introduced the sort of relationship Sir Christopher is putting forward, namely that the function of this Committee should be in effect to find out exactly what the Council is doing and tell them to stop it, I would have thought changes the nature of this Committee to such an extraordinarily radical degree that the reports which emerge from the Committee will frankly be less influential in the future than they were in the past.

(*Sir Christopher Prout*) My Lord Chairman, you ask me to express my views on these matters. I think I emphasised the primary question which had to be asked was: what function do your Lordships wish to perform? Lord Richard has expressed his view very robustly in a way I remember so well in the European Parliament. He has reached his conclusion from the point of view of a different function that the Committee of the House should perform from the

16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Lord Richard Contd]

point of view I have taken and, of course, he has made an analysis which flows logically from that.

Chairman

486. I wonder whether we could move on to another area. I think both you, Sir Christopher and Mr Corbett, have touched on the relationship between the European Parliament, the scrutiny which it conducts, and the work of our European Communities Committee. More generally, as you are very well aware, Sir Christopher, the Minister of State Mr Garel-Jones touched on this when he spoke to us. He laid some stress on the draft declaration which the Government submitted to the Inter-Governmental Conference on co-operation between national parliaments and the European Parliament, for greater contacts between national parliaments and the European Parliament and also for regular meetings between Committee Chairmen and Parliamentarians with special interests. As I understand it quite a lot of that has been embodied in Maastricht. Given the increased powers, only perhaps marginally increased, of the European Parliament, post-Maastricht, I would be very glad to know what you feel about these recommendations for closer co-operation between national parliaments and the European Parliament and what form you feel this co-operation should best take in the future.

(Mr Corbett) My Lord Chairman, I think the majority of MEPs will be very pleased that what emerged from Maastricht is more along the lines of pragmatic co-operation rather than the grander scheme to set up a "Congress" which was proposed to meet three times a year: 50 per cent MEPs, 50 per cent national Parliamentarians. There was a strongly held view among the MEPs that the grander scheme was not the right approach. The European Parliament itself has been looking at ways of improving co-operation with national parliaments on a more practical level, such as the sort of things you are indicating: contacts between the corresponding parliamentary committees and the possibility of hearing MEPs (of which your Committee gives such a good example and if I could say so especially the fact you invite MEPs from countries other than your own because the MEPs from your own country to a certain extent you will often be familiar with some of the views and language you hear from them).

Lord Tordoff

487. Indeed some of the political views in this country are not represented by our MEPs.

(Mr Corbett) Perhaps, indeed, except in this particular House. I think it is particularly illuminating for you to hear views from MEPs from other countries. That is what MEPs in the European Parliament have to contend with, that is part of their role, to bring in views from a variety of political cultures and different traditions as well as different interests on the hard facts of an issue. The extent to

which you can also benefit from hearing this variety of views and inputs, and the richness and diversity of debate that comes from that, is all to the good.

Chairman

488. I listened very clearly to your scepticism about the more grandiose proposal for the "Assize" although I may be wrong in calling it that. I think I am right, but I speak for correction here above all from Lady Serota, that there is already in existence a six monthly meeting of a body called the Conference of European Affairs Committees and I do not know whether you or Sir Christopher have any comments on that type of institution and how it might be developed or whether Lady Serota has views she would like to express?

(Sir Christopher Prout) Perhaps I can respond to that in a slightly round about way by saying at the Assize that was held a year ago—a little more than a year ago—in Rome, Lady Serota was present—

489. This was Rome?

(Sir Christopher Prout) Yes—as indeed were a number of your Lordships. The conclusion was to draft a massive resolution which was, I think, really satisfactory to no-one but had something for everyone in it and to declare that this was the view of the assembled Parliamentarians; although when they got home I think all of them distanced themselves to a large extent from it. I felt that was not a valuable exercise. I do, however, think regular meetings between national parliamentarians and European parliamentarians are extremely important in order to pursue this objective of complementarity that I talked about earlier and in particular to try and identify over a future period of six to nine months or a year what issues are likely to come up which will require close co-operation in order to achieve a particular objective and that objective is—to put it at its most general—to make sure the legislative process is as open and as transparent and available to the public as possible.

(Mr Corbett) I think the Committee of Chairmen of European Affairs Committees can serve a useful enabling purpose in that in meeting every six months it can review the whole range of contacts that take place or could take place between national parliaments and the European Parliament or among the national parliaments themselves. In having this vehicle to raise new ideas and launch proposals for enhanced co-operation, this special committee, which now has its own rules of procedure, is a good thing in that respect. But I do not think it will replace the contacts though between specialists. You may wish to hear a Committee Chairman or rapporteur (with a bit of flexibility because of linguistic reasons—the European Parliament may not be able to send the rapporteur but perhaps another Member whose English is better) in some cases and the European Parliament will similarly be pleased to hear the specialists you have in your various sub-committees. I think that is the nitty gritty together with the contacts which have been established at the level of the political families, where you can go into detail and benefit from each other's experience. The



16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Chairman Contd]

Committee of Chairmen is a framework to enable that and the "Assize" was a grand one off event. I would say it was useful in that context at that particular time, just before an IGC was about to start, it was especially useful from the European Parliament's point of view. It was a one off thing which might on occasion be repeated but should not be part of the normal method of maintaining relations with the European Parliament.

*Baroness Serota*

490. I am interested to hear your view on both the Rome Assize and the Conference of European Affairs Committees. On the former I agree with Sir Christopher, it was a valuable experience in the sense Parliamentarians from all 12 Member States met together but we found the procedures, to say the least, extremely cumbersome and rather unusual and as one who served on the drafting committee, going through 210 amendments night after night, I have some painful memories. In the sense of bringing people together it was useful but I agree with Sir Christopher and Mr Corbett it is not something to be repeated too often. It could be useful on occasions. With regard to the Conference of the European Affairs Committees I have been at every meeting since their inception. They started, as Sir Christopher and Mr Corbett will remember, on the suggestion of President Fabius, the President of the French Chamber of Deputies, and they have proceeded by experience really rather slowly, but now I think are fairly well established. I personally was not so concerned with the rules of procedure, which I thought rather cumbersome for such a body, and saw it very much as a vehicle for exchanging views and moving by consensus rather than by votes; not a view everybody shares, but I think it is the one that currently prevails. The only thing I would say to the Select Committee on Committee Work of the House, if I may, on this occasion is these activities involve expenditure. The Conference of European Affairs Committees meets once in every presidency, i.e., twice a year, but there are also sometimes preliminary meetings so there could be as many as four meetings a year and if in addition to that the Members of the House are to work more closely at specialised committee level with committees of the European Parliament, which I think would be a valuable experience, from time to time depending on the subject matter to be considered, then again this is both time-consuming and costly. I think if the work of the Select Committee and the other Members of the House were involved in this way, then resources would have to be made available. They are also fairly costly on staffing time too. We have very much welcomed in the last year or two the bilateral visits which have also played a part in bringing together members of national parliaments and the European Parliament. In fact our Select Committee has had, I think, some eight, if not nine, visits of this kind in the last year or so where we have exchanged views with members of national parliaments and of course with the Members of the European Parliament on particular occasions when we have been considering

specific topics, so I think if national parliaments are thinking of extending their relationship and role with the European Parliament, money would be involved.

Lord Thurlow] Might I ask a nitty-gritty question which perhaps is unfair. Would you see in this connection, in an ideal world, a multiplier of, say, three times the resources which are at present made available or twice or is that unfair to try to ask you that?

Baroness Serota] We have just had a question in the House on European air fares and this of course is one of the costs involved. I could not say at all just what it would cost. We could look back on the last two years presumably and give you a costing of the involvement of myself and other Members of the Committee and staff in the work of the Conference of the European Affairs Committees. No doubt we could cost gross the Rome Assize, but I make the point because these things have a habit of being forgotten, that when the Committee actually comes to decide on its findings and recommendations to the House, someone is going to ask, "What is all this going to cost?"

*Chairman*

491. On this question of co-operation between the European Parliament and national parliaments could I just ask one more narrowly parochial British question? I think, Sir Christopher, when you met with the Clerk of the Parliaments, Michael Wheeler Booth, when he visited Strasbourg some months ago, you expressed the view that it might be useful, if it were possible, to arrange to have a quarterly meeting of the Chairmen of the two Scrutiny Committees of the House of Lords and the House of Commons with the British Vice Presidents and Chairmen of the two British political groupings. In view of what has been said about time and expense, do you still feel this would be a desirable thing?

(Sir Christopher Prout) Very much so for the reasons I gave in my previous answer. I think it is very important to hold these regular meetings in order to look forward politically—to try and identify what the important issues will be. If you are thinking of a 12-month rolling programme it will assist, I think, all parties concerned in the planning they have to undertake in deciding where to concentrate what are, for all of us, limited resources.

*Lord Tordoff*

492. Do we gather from that, Sir Christopher, that you would envisage greater selectivity in scrutiny at this end?

(Sir Christopher Prout) I think that that almost inevitably follows from the increased volume of legislation that is going through the European Communities. It is simply not possible for the resources of any national parliament to expand—that is perhaps an adverse comment on the Communities—to expand in order to meet that. I think you are going to have to use that famous Royal Armoured Corps Manual expression on the deployment of firepower, "You are going to have to concentrate for effect". I have expressed a view to the

16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Lord Tordoff Contd]

Clerk of the Parliaments that I think there are a number of very important, big issues coming up which I think it would be extremely valuable to concentrate on—like enlargement, like ethnic minority rights—which are crying out for serious political consideration but which have not yet been seriously politically considered.

493. Do you think our six or seven sub-committees are the right sub-committees for the future task or should there be changes there?

(*Sir Christopher Prout*) My own view is that it might be desirable to introduce a greater degree of flexibility than you have at the moment. That is to say, perhaps, commit one existing specialist committee to more general tasks. I think that perhaps a little more flexibility, given all the uncertainties we face at the moment, would be desirable in the foreseeable future.

Lord Clinton-Davis

494. Do you think, based on such experience as you have of other legislatures, that where Members of the European Parliament are able to attend the functioning of committees perhaps without a vote, not simply be heard as witnesses but actually to participate as fellow members of a committee, do you think that that would be something which this House or perhaps the House of Commons as well ought to give very full consideration to?

(*Sir Christopher Prout*) Well, in answer to this question I am aware I may not be representative of the majority of the British MEPs, but I would like to return to the way in which I answered your previous question, to the concept of separation of powers. I think it would be wrong for MEPs to participate, politically, in the committees of national parliaments because I think that would fetter their political discretion in their activities in the European Parliament. I fully support MEPs appearing as witnesses in front of committees and I think there is a strong argument for committees having MEPs on an *ex officio* basis to perhaps give specialist advice or technical advice or background advice. But I myself think, and I am aware I am not necessarily representative of my colleagues, that it would be wrong for MEPs to participate politically in the work of committees; and above all wrong for them to vote.

495. Do you have any evidence to suggest the participation of German MEPs in the activities of the Senate in the areas they are considering, where they have no vote, fetters their ability to operate in the European Parliament?

(*Sir Christopher Prout*) No, I have no evidence in the sense I have talked to any one of them and they expressed the view that they do feel constrained in what they do in the European Parliament as a result of what they do in the German context. All I can say is that to the extent anything they do in the European

Parliament contradicts or could contradict what they did in their own parliament, they ought to be constrained.

Lord Richard

496. I would just like to come back to what Sir Christopher was saying, taking a subject like enlargement or ethnic minorities, and what are we seeing is happening? This Committee would say, "Right, we will examine the pros and cons of enlargement" and at the same time the committee of the European Parliament would say, "Right, we will examine the pros and cons of enlargement" and your people would come across and discuss it with us and people from here would go to Brussels and discuss it with your committee with the object of producing coincidental reports at approximately the same point in time. Is that the sort of thing that you are thinking of?

(*Sir Christopher Prout*) I seem to be upsetting the Commissioners today, my Lord Chairman.

Chairman

497. Proceed boldly on, Sir Christopher.

(*Sir Christopher Prout*) My Lord Chairman, I see no conflict at all, no duplication in the European Parliament and the House of Lords launching themselves on an analysis of the same topic, for example, like enlargement because they will be looking at it from a completely different point of view. Their focus will be different. The focus of the European Parliament is the focus of the Council on the one hand and the Commissioners on the other and the responsibility of the Commission as a whole. The focus of your Lordships' Committee, I take it to be, is to reach a view about what our own national institutions ought to be doing about this subject. It may be the conclusions of these two reports will be identical or very similar but the purpose of starting out on the journey would be or ought to be, dare I say it, a different one.

498. I think I should add that I think Sub-Committee A of the European Communities Committee will be considering, the question of enlargement, as near as tomorrow morning, having their own first discussion.

(*Mr Corbett*) If I may just add one point, I think what we all want is cross-fertilisation of ideas and mutual input into each other's debates but to go much further encounters practical problems. Even the idea Lord Richard proposed that the national parliaments and the European Parliament report at the same time, taken across twelve national parliaments, many of whom have two chambers, is actually, in practical terms, not easy to arrange. Of course it will be more or less at the same time because these issues inevitably come up at the same time, but in terms of reporting within even the same month it would be rather difficult. I think the suggestion was made at a recent European Council meeting about a year and a half ago a date be agreed in which all national parliaments could debate European affairs on the same day. However, with the different dates of



16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Chairman *Contd*]

Parliamentary recesses, different traditions, the different rules of procedures for putting something on the agenda, it proved, in fact, to be practically impossible. There would also be practical difficulties, coming back to Lord Clinton-Davis's point, in involving MEPs to a great degree in the work of the committees in national parliaments. The Belgian Parliament is the one that goes the furthest, I think MEPs even vote in the committee, not in plenary but in committee, but then they are in Brussels, it is easier for them. For MEPs to attend frequently meetings in London in addition to their own current responsibilities dispersed as they are between Brussels, Strasbourg and their constituency would be very difficult and in particular for those MEPs from Scotland, the North of England, Wales, the South West and Northern Ireland, practically impossible.

Chairman] It is rather illustrated, your point, by the fact that three of the MEPs in this House did not find it possible to come to this meeting today.

*Baroness Elles*

499. I wanted to go back to the practical proposition of having regular meetings between the political group leaders and the Vice President of the European Parliament together with Chairmen and other suitable and appropriate Members of our own Select Committees and presumably of the Scrutiny Committee of the House of Commons. Quite clearly post-Maastricht we are going to have an enormous range of new issues which have not been dealt with and presumably are not covered now in our Select Committee in this House specifically and presumably in another place; and presumably the workload of the European Parliament is going to be practically doubled. It is difficult to assess at the moment but if you are really going to deal with the six or seven new issues which are included in Maastricht you will have to think of restructuring your committees or adding different approaches to the problems otherwise you will not get through the legislative processes of the Council in time. You are going to be faced with an organisational problem. I was wondering if it is not a bit premature at this stage to say how one would be able to construct some relationship on the kind of basis you have discussed but whether it should be accepted or considered in principle it would be a good thing without going into the detail because quite clearly the detail will be considerably altered over the next six months?

(*Sir Christopher Prout*) I agree with Lady Elles that the next six to nine months is going to be a period of considerable turmoil is too strong a word there is going to be a large amount of procedural refurbishment in the European Parliament. Indeed, I think it may discover at the end of that period it can no longer cover its work in one plenary session a month. I hope it does conclude that, although that has implications for the Parliamentary seat which might prove testing for the 12 Member States but that is another matter. It is not for me to say how rapidly you would wish to advance your own views about forward planning. But I think the idea that lies behind the suggestion will not be lost sight of. The

better your early warning system, the better your reconnaissance, in my view, the more effective will be your political contribution. You cannot have effective reconnaissance unless you are out and about, talking or making contact with all the other key players.

*Lord Pym*

500. The background to these exchanges is a serious desire on the part of the Palace of Westminster politicians here and our European Parliamentarians to increase in a genuine and effective way inter-parliamentary co-operation. I think the Danish treat this as seriously as we do, what about the other ten Members, are any of them, the MEPs, really thinking in these terms or do they look at it so differently that they never really will think about it in these terms and it is of no interest to them to get the co-operation which to us is fundamentally important?

(*Mr Corbett*) I think, notwithstanding differences which are real in national parliamentary traditions, the other national parliaments in the main are interested in these issues. We have mentioned already the three national parliaments that have one form or another of a parity on the committee.

*Lord Richard*

501. Who are they?

(*Mr Corbett*) Belgium, Germany and most recently Greece, that is the new addition to that list. The French National Assembly and, the Senate, to take the French example, have each a "delegation", a Committee in all but name I would submit. They regularly visit the European Parliament mainly during sessions in Strasbourg. They produce detailed reports of a different style than your own but they do produce regular reports. Different methods have emerged in different countries but all are interested in the issue.

*Lord Plumb*

502. To go back, my Lord Chairman, to your original question about the influence of the House of Lords Scrutiny Committee reports, we have heard quite clearly the value they are to our own Members of Parliament in this country and indeed interested parties in the United Kingdom, but from a European point of view there is a great deal of interest in all sorts of quarters, as we have heard, and the publication of evidence is indeed provided, from a European point of view, *ex gratia*, but when it comes down to it what is the weight of it? Is it something that gives you added strength as a Member of the European Parliament from the United Kingdom or is it actually having some impact upon the Commission or the Council of Ministers or notably the European Parliament? It is lovely to have it, it is of value and it is frightfully well thought out, but at the end of the day what is it contributing to the actions and decisions taken in the European context as a whole?

16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Lord Plumb Contd]

(*Sir Christopher Prout*) In the early 1980s I was a member of the Legal Affairs Committee. It would be very few Members of the European Parliament, whatever nationality, who would embark as rapporteurs on an analysis of a Commission proposal, very few who would dare to do so without first consulting a House of Lords report on the matter were it available. So on the analysis of technical legislation I would say that, as far as the published documentation is concerned, House of Lords reports almost invariably have a status which is second to none. But if you were to ask me what influence the House of Lords committees' reports had on Ministers taking decisions on behalf of their own country in the Council of Ministers, or civil servants anticipating the decisions Ministers are going to take in the Council of Ministers when they operate in Council working parties, I suspect that the influence of the work of the House of Lords was more variable. I suspect sometimes it may have carried weight and sometimes it may have carried no weight at all. And I go back again to a point I made earlier; that one of the crucial questions is: who are you trying—who do you want—to influence? You certainly have an enormous amount of influence on the day to day committee work of the European Parliament, You provide us with a Rolls Royce system. It is a Rolls Royce system and it is a great luxury for people like myself, when, as the rapporteur on the Consumer Credit Directive in the European Parliament, I found not just the work done on that topic, but also on related topics, absolutely invaluable. But is that the function you wish to perform in the future or do you wish your reports to play a different role?

*Lord Clinton-Davis*

503. But if you have given evidence before a committee of this kind, would you agree that you would have some considerable interest in the conclusions reached by that committee, the opinion of that committee? Would you further agree that insofar as officials within the Commission are concerned, your experience would concur with mine that they take very seriously indeed deliberations of this kind in the further formulation of policy?

(*Sir Christopher Prout*) I agree of course that if you are a witness in front of a committee which produces a report, you are highly likely to be extremely interested in the conclusions of that report! I would place great weight on your views. As to the influence that the House of Lords reports have on the work of the Commission officials, I found in the case of producing the Parliamentary Report on the Consumer Credit Directive that it had no influence on Commission officials; and I am delighted to say the legislation which finally emerged from the European Council was almost a carbon copy of what the European Parliament, influenced by you, recommended. That may not be the case in every piece of legislation.

*Baroness Elles*

504. I was going to ask you if you would agree that it is very difficult first of all to analyse political influence and exactly where it comes from when you look at the end of the day, "Why did this result come about? Was it because of this report or the work of the Parliament or whatever?" Would you agree that very many of the recommendations of the reports of this Committee do find themselves in fact at the end of the day in the legislation which is adopted by the Council of Ministers?

(*Sir Christopher Prout*) Most emphatically I would.

(*Mr Corbett*) As we have both said, it is the publication of the evidence which is one of the things that is greatly appreciated but of course the evidence may be on different sides of an issue and, therefore, the House of Lords reports, at least that aspect of them, will be giving ammunition, as it were, to MEPs of a variety of different viewpoints on different sides of a particular argument so in that sense it is not necessarily the collective view of the Committee and its conclusions which is making the headway in the European Parliament or in the Commission or wherever, and I think that distinction ought to be borne in mind, although the conclusions are of course looked at very seriously. Lord Tordoff asked a question earlier, which I think neither of us has answered in that respect, which was to what degree are the debates in the Chamber followed. Indeed the European Parliament has the same problem in that its reports are printed and circulated, but not everybody then looks necessarily at the resolution in the final form adopted in the Parliament which may differ from the proposals of the committee, nor at indeed the verbatim debates which in our case are available in translation only some months later. Although there is not a linguistic problem in the Lords, nor the problem to the same degree of texts being adopted in plenary which develop from committee reports, I think the debates are less widely available and less widely read than the reports which you circulate.

*Baroness Serota*

505. A few moments ago in answer to Lord Pym's question, Sir Christopher said he thought it was our technical reports which were of such importance. That seems to conflict with his earlier statement that it was the more generalised reports he thought were of greater value.

(*Sir Christopher Prout*) I am glad you returned to that because I can see why you thought there might be conflict between the two remarks; but I can assure you there is no conflict. In talking about the influence of your scrutiny reports, I was talking about the influence they had on rapporteurs in the European Parliament and on the contribution that the European Parliament had made. On the earlier question, I was asked which ones I thought were the most important reports in a more general political sense; and in my view the more general reports that the House of Lords have made are of relatively more value to me as a politician and, I believe, to thinking



16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Baroness Serota *Contd*]

about the Community generally, than the more specialised ones.

(*Mr Corbett*) I think different Members of the European Parliament may appreciate different types of reports to different degrees. The leader of one of the European Parliament's parliamentary groups will of course particularly appreciate the wider political reports, whereas a Member who is a key member of a specialist, technical European Parliamentary committee may be much more interested—in many cases anyway—in the technical reports.

*Lord Richard*

506. I am going to observe that it seems to me that the House of Lords reports do better in Europe than they do in our own country. It is perfectly true, I entirely agree with Lord Clinton-Davis and from my experience in the Commission, that we are read and listened to and the reports are valuable, but in terms of our own Government and the Council of Ministers my impression is we are not overly influential in the sense Sir Christopher wants us to be, but you are asking a great deal of this Committee.

(*Sir Christopher Prout*) Lord Richard could not have put it better.

(*Mr Corbett*) May I come to a point about what happens after Maastricht and I think this may affect the debate in a certain way in that the powers of the European Parliament will henceforth be increased in certain areas but not in others. In addition to that there are the two so-called pillars, alongside the Community on Common Foreign and Security Policy and Co-operation on internal affairs and juridical matters where the European Parliament will not play a part as in the legislative or budgetary side of the Community, but will receive information from the Minister holding the chairmanship of the Council and will be able to put questions. This may also have a bearing on the type of scrutiny exercise in these different fields in national parliaments and the European Parliament respectively because they will be in different situations with regard to different sorts of decision taking. Certainly the European Parliament has not had time to digest fully the results of Maastricht, as you will appreciate, and I expect you will be in a similar situation, but that point may well be worth focusing on in the coming months.

*Chairman*

507. I am very glad you mentioned this aspect of things. A group of us will be going out after Christmas, fairly early in the New Year, to Brussels where perhaps we may meet Sir Christopher and Mr Corbett again but I think this is one area we will very much wish to look at and I am glad you raised it. I have only one further question myself to ask our two witnesses. I think Sir Christopher you referred to the importance of timeliness in reports, of having an early warning system by whatever method so one catches proposals on the wing, as it were, rather than when they have landed on the ground at the other end of the time spectrum. It has been put to us in evidence that one area which our European Committee should

be looking at is the implementation of Community legislation once agreed. On the other hand, our Foreign Office witness, Mr Garel-Jones rather warned us off that area, not least since it could arouse a good deal of opposition from national governments. I do not know whether you have a view on the desirability or otherwise of our European Committee looking at implementation?

(*Sir Christopher Prout*) I have a view on what prompted Mr Garel-Jones to make that remark but perhaps I should not express it in this Committee.

508. Please, we will be delighted to hear.

(*Sir Christopher Prout*) I think the European Commission is, if you like, the Community's Director of Public Prosecutions and it is its responsibility to make sure the level playing field is maintained and as such it has a very important function both with respect to implementation and enforcement because they are both very important. We have taken, I think, a crucial step forward in Maastricht in giving the European Court of Justice the power to fine states which do not implement European legislation. It is also true the European Parliament does, on an annual basis, produce an excellent report on the general state of implementation and it sends a pretty strong signal to those Member States who are quite clearly behind hand. I think, however, there is a case for your Lordships' Committee looking at these questions not on a case by case basis, of course, but in a general way. I think whereas the question of implementation is quite well documented, the issues surrounding enforcement are less well documented and less clear. I am not suggesting your Lordships should involve yourselves in particular cases but I think, for example, a report on the general question of enforcement would be a valuable one, I know of no such report. I think it would be a valuable one because I think it will become a very, very big problem after the Single Market is in place. Once all the legislation is through the Community institutions and then through all the national legislatures, you have still got potentially this huge volume of differential enforcements and what is going to be done about it and I think that, in my submission, would be a legitimate area to look at as a matter of principle, although I want to re-emphasise what I said about getting into particular cases. I think that would be wrong.

*Baroness Elles*

509. The Commission does in fact at the request of the European Parliament have to produce an annual report on the application and implementation of Community law. I think one would have to be quite careful not to step into an area which is the competence of the Commission, as Sir Christopher has pointed out, to do it at this level on a national basis. I think it would create a lot of legal problems as well as political ones.

(*Sir Christopher Prout*) My Lord Chairman, I of course agree with Lady Elles and if I did not emphasise strongly enough that that report by the European Parliament was in relation to the

16 December 1991]

SIR CHRISTOPHER PROUT, QC, MEP  
and MR RICHARD CORBETT

[Continued]

[Baroness Elles *Contd*]

Commission's powers, I would like to emphasise that now. On the other hand, the question of enforcement is a matter for national courts and under the doctrine of subsidiarity I would say rightly so. I think it is an area in which the Commission has not yet trespassed and the question about who is responsible for doing what if the courts of one Member State fail to enforce law which is part of the law of that Member State, therefore prejudicing the operation of the Single Market, is I think an interesting question and, more than an interesting question, it is a very important question which has not really yet been broached and ought to be.

*Lord Clinton-Davis*

510. I do not follow this. I may be obtuse, Sir Christopher, in this regard. If there are matters or issues affecting Community law which the domestic national court considers appropriate for ventilation before the European Court of Justice, it has the power to refer those issues to the European Court of Justice, does it not?

(*Sir Christopher Prout*) Yes, it does, but there are cases where national courts do not do that and there are further cases where matters ought to be brought in front of national courts by national authorities which are not.

Lord Richard] That is the interesting one, I think, that if a particular government is not behaving in a particular way which protects part of its industry, can another Member State or Commission or whatever actually prosecute that State in its own courts and if not who does it and where do they do it? Baroness Elles] I think here, my Lord Chairman, things may be changed by a very recent case where a court handed down a decision about six weeks ago where individuals can now bring their government to the national court for having failed to implement Community law and I think this may in fact alter the focus completely. I do not want to get involved in this, but that is why I said it would involve a lot of legal and political issues.

Lord Clinton-Davis] If they had suffered personal damage.

*Baroness Elles*

511. Of course. They must have a personal injury, yes.

(*Mr Corbett*) I believe that one of the first reports which was drawn up by the Belgian Parliament's specialised committee was on the implementation of Community law in Belgium and it caused quite a stir

at the time in Belgium so it may well indeed be a fruitful area for your Committee to look into. There is a second aspect of implementation of Community law, not as important as the implication for Community States, but where Community law confers implementing powers upon the Commission and usually when this is the case the Council establishes a committee of national civil servants to keep an eye on the Commission and indeed so many committees with so many procedures have been set up over the years that the term "comitology" has come in to describe this constellation of committees. One of the objectives of the Single European Act was to rationalise this plethora of committees into three main types of committees with certain variants. These committees sometimes have the power to block the Commission implementing a decision and refer the matter to Council but Parliamentary scrutiny was absent, European Parliament or National Parliamentary scrutiny. One of Lord Plumb's achievements as President of the European Parliament was, through an exchange of letters with President Delors, to introduce what we now refer to as the Plumb-Delors procedure whereby when the Commission tables any implementing provision in front of any Committee of national servants it is automatically sent the same day to the European Parliament where it is referred to the European Parliamentary Committee. In most cases it is purely technical, but if important matters seem to be raised by the draft decision a matter can be taken up by the Committee at Committee level (or indeed thanks to a rule change introduced by Sir Christopher Prout) in plenary. In the last twelve months these procedures have been used for the first time in full and the European Parliament has had plenary debates on the implementing matters of the Commission. Here I would submit to your Lordships perhaps that is an area best left to the European Parliament because if the Ministers in Council have felt able to leave it to the Commission to resolve perhaps national parliaments should leave it, complicated as it is, to the European Parliament.

Chairman] I notice incidentally with interest that Sir Christopher did not choose to lift the veil of reticence from the Minister of State's reservations. I do not know if there are any other questions which Members of the Committee or those who have kindly joined us would like to put to Sir Christopher and Mr Corbett? If not, it only remains for me to thank you—and I do so most warmly and sincerely—for some very expert and informed evidence for which we are very grateful for. Thank you very much for coming.



WRITTEN EVIDENCE  
SUBMITTED TO  
THE SELECT COMMITTEE ON  
THE COMMITTEE WORK OF THE HOUSE





## WRITTEN EVIDENCE

### Memorandum by the Clerk of the Parliaments on Select Committees on Public Legislation

1. When I gave oral evidence to the Committee on 18 June, I was asked to submit a memorandum going into more detail about the options for developing the use of select committees on public legislation. This paper will not discuss the use of public bill committees, which simply take the committee stage of bills off the floor of the House—and I believe the arguments against this have already been put to the Committee. Nor will it consider two specific suggestions for committees on legislation—looking at the grant of powers to issue delegated legislation and the environmental impact of bills—which are covered by separate papers. It will concentrate on the opportunities for the further development of evidence-taking select committees looking at legislation.

2. The possible advantages of such committees are:

- (i) they could save time on the floor of the House;
- (ii) they would import some of the strengths of select committee work into consideration of legislation;
- (iii) they could provide a forum where drafting and probing amendments could be discussed, with a direct exchange of views, including the involvement of civil servants and draftsmen.

#### HOUSE OF LORDS' PRACTICE

3. My first memorandum gave a list of the recent select committees on public bills (paragraph 8). As I explained, these have tended to look into social or moral issues—discrimination, laboratory experiments on animals, abortion—rather than party political subjects. Only one of the bills considered by a select committee has been a Government bill, the Hare Coursing Bill. I believe that these committees have generally been regarded as a great success. But only a very small number of bills have been considered suitable for such treatment.

4. If select committee consideration of public bills were to be extended, the committees would have to work rather differently. Up till now, these committees have usually spent several months taking detailed evidence about their subject, and deliberating at length. This would not be possible with a bill which has to pass all its stages within a certain timetable, and which may well have been the subject of considerable consultation both inside and outside Government. In addition, the bills themselves might be rather different in nature. The bills recently considered in select committees have centred on a single “great issue”, and have often been introduced specifically to facilitate the establishment of a committee on that subject. Government bills would not be tailor-made for a committee. The committee might be faced with a broader range of subjects, and might have to be selective (as suggested by the Reading Clerk in Q 41).

5. The possibility of increased use of select committees on bills was of course discussed at length in 1977 by the Practice and Procedure Committee, with whose conclusions the Committee will now be well acquainted.

#### SPECIAL STANDING COMMITTEES IN THE COMMONS

6. Many other parliaments operate “inquisitorial” committees which examine bills off the floor of the House. The Committee will no doubt be gathering evidence on the experience of parliaments similar to our own such as those in Canada, Australia, New Zealand and perhaps the United States. But in addition, there is relevant experience nearer home. The House of Commons experimented with a system of special standing committees in the early 1980s. These committees had the power to take evidence, under certain fairly strict limits. Within 28 days of the committal of a bill, the committee could have up to three three-hour morning sittings hearing oral evidence (usually in public), plus one such sitting in deliberation. It could also take written evidence. The chairman of the committee was usually the chairman of the relevant departmental select committee. The committee's evidence was printed, but they did not write a substantive report; after the 28 days expired, the committee reverted to clause-by-clause consideration of the bill as a normal Commons standing committee, under a different chairman.

7. Experiments with this procedure took place on three bills in 1980–81, and one bill in both 1981–82 and 1983–84. The bills tended to be non-party political, such as the Mental Health Amendment Bill and the Matrimonial and Family Proceedings Bill. The fact that the procedure has not been used since then might suggest it was a failure. In fact, when the Commons Procedure Committee looked at the procedure in 1984–85, they reported that virtually all the evidence they had received on these committees was enthusiastic, and they have consistently supported the increased use of such committees. The use of special standing committees was formalised by a standing order in 1986—although the procedure has not been used since then. The reason why the recommendations of the Procedure Committee have not been implemented was strongly suggested in the evidence of the then Leader of the House, Mr John Biffen MP to the Committee; that even a 28 day delay was considered too great an interference with the parliamentary timetable. The Commons Procedure Committee's recent report on select committees called on the Government to “make a serious effort to ensure that a reasonable proportion of the legislative programme . . . is referred to special standing committees”.

8. There are several lessons to be learnt from this experience. First, it is not impossible to organise committees to take evidence on a bill in a fairly short space of time; and this evidence can be valuable. But it would not be possible to expect committees to produce the detailed reports which are currently the norm for Lords select committees—in the Commons, the knowledge gained from the evidence was merely used to inform the discussions of the standing committees. Second, some constraints on the committee, most obviously concerning its timetable, were considered essential. Finally, there is always a danger that such committees will be seen as too great an obstacle by the business managers. However, I believe that some of the benefits acknowledged by the Commons Procedure Committee could be more easily achieved in the House of Lords than in the Commons. The minimum intervals in the Lords already provide some guarantee of a delay between stages.

#### PRACTICE AND PROCEDURE COMMITTEE

9. The Practice and Procedure Committee proposed a structure of subject-related standing committees, which would take evidence on any green papers, white papers, bills and delegated legislation within a certain subject area. My own view is that this suggestion was over-ambitious. Whilst the European Communities Committee sub-committees have illustrated the advantages of having committees which can gradually build up knowledge and expertise in one area, the practical obstacles involved in organising and timetabling committees on the lines of the Practice and Procedure Committee would be formidable. In some respects, such committees might help to avoid some of the difficulties encountered by the Commons special standing committees; examination of green and white papers could be carried out without great time pressure (although these are very often the subject of enquiries by the Commons departmental select committees). In any case, special standing committees' business in a particular session would be likely to be dominated by bills. If the committee's consideration of the bill started only after second reading, speed would again be the problem. If consideration of Commons bills started while the bill was in the Commons, the Commons might with some justice claim this was pre-empting their deliberations, and many of those who might be expected to give evidence would be busy in the Commons. The fact that the Practice and Procedure Report was never implemented was in part due to such factors; although the political realities of the day were the determining factor.

#### SPECIAL STANDING COMMITTEES

10. The aim of special standing committees should be to ensure that public bills can be considered, with the committees avoiding serious disruption of the Government's programme. If the Committee wish to consider this option, it will wish to consider the following questions.

##### 11. What would be the exact role of these committees?

- (i) The committees could take evidence and merely have this printed. The advantage of this is that the committee would not have to spend time in consideration of a report; the disadvantage that the House would not have the benefit of the committees' conclusions.
- (ii) The committees could take evidence and write a report. Committee reports are undoubtedly one of the reasons why House of Lords committees are well respected. The disadvantage of a report is that it takes time to draft and agree. In addition, I suspect that—at least initially—on party political issues, the time and evidence available to a special standing committee might not be enough to allow a cross-party consensus to develop. Such committees might have to restrict themselves to a summary of the evidence with or without a short report.
- (iii) The committees could take evidence and make amendments, replacing the committee stage on the floor of the House. This would mirror the concluding stage of the special standing committees in the Commons (since these sit as traditional standing committees at the end), and indeed would follow the example of other legislatures. The most obvious advantage of this option would be that it would save time on the floor of the House—around half of the time which the House spends on legislation is devoted to the committee stage. Giving the committees powers to make amendments would mean that drafting amendments could be dealt with in the committee. A report would not be required. Members of the House have in the past been unwilling to lose the opportunities of the committee stage on the floor of the House. The committee will have to weigh up whether the case for saving time in the House and giving these committees the power to make the amendments is strong enough to call for a reassessment of this view. I would suggest that if the Committee did go down this route (i) the practice usually followed that an amendment agreed to on division at committee should not be reopened at report should not hold good for bills committed to these committees; and (ii) the parties should be able to put a reserve on any issue of great party interest in the committee, so that a vote would not take place until report.

##### 12. How will bills for such committees be chosen?

- (i) The committee could be given a particular subject area, and all bills within that area would automatically be referred to the committee—unless a motion in the House determined otherwise (this would allow a let-out if time pressure was exceptional). The easiest way of doing this would be to specify one department, and send all bills sponsored by that department to the committee. Possible



departments might be the Department of the Environment, the Home Office, the Law Officers'/Lord Chancellor's Department, or the Scottish Office<sup>1</sup>. One advantage of such a system would be that the committees could already be up and running by the time a bill received its second reading.

- (ii) Bills might be committed to these committees by motion in the House. A decision would be made bill-by-bill. If the idea of a Liaison Committee does find favour with the Committee, this might be one of its functions. It may be that if the Committee decided to experiment on these modest lines, it could be left to the Government to suggest a suitable bill, presumably a Lords bill to be ready as soon as possible after the State Opening. Until the procedure had a chance to prove itself it might well be sensible to concentrate on Lords' bills.

**13. What restrictions should be imposed on the length of these committees? What should be their powers to take evidence?** It would be essential to impose a strict limit on the time which these committees could take. It might be best to follow the example of the Commons special standing committees, with a limit on the number of weeks the committee could sit—perhaps three or four—and on the number of times they could take evidence. If the committee was designed to replace the committee stage on the floor of the House, it could obviously take a little more time. There is no reason why such a committee should be restricted to meeting only once a week—it could meet fairly intensively over a two or three week period. Many witnesses would already have been following legislation closely. But they would need some warning, potentially difficult to arrange if each bill was to be committed separately to the committee. It would save time if the committee were entitled to take written evidence as well as oral evidence, but again witnesses might need a warning.

**14. How large should these committees be? Should they be designed primarily for backbenchers? Should a Minister or Government Whip be entitled to sit?** The answers to these questions would depend largely on the exact function to be given to these committees. If the committees were to have the power to make amendments, a larger proportion of frontbenchers might be appropriate, and the committees would have to be large enough to be reasonably representative of the various shades of opinion in the House. Unless the House orders otherwise, Standing Order 63 (All Lords may attend and speak, but not vote) would apply, allowing any Lord to attend. Such Lords would not have voting rights. This would enable a broad range of Lords to become involved.

**15. Would these committees deal with bills in their entirety?** It might be possible to send some clauses only of a bill to a committee looking at a bill, which could allow some of the thornier and more complicated parts of a bill to be considered in committee rather than on the floor of the House. But some mechanism would have to be established to determine which clauses should be dealt with in this way. This problem would not be so acute in the case of the proposal for a committee to look at environmental aspects of bills (see accompanying paper). Committees might also decide to look at drafting amendments—although these do not take up much time in the House, consideration in committee would allow a draftsman to be present. The presence of draftsmen and civil servants would obviate the need to filter views through the front benches.

## CONCLUSION

16. The Committee will obviously have to weigh the advantages of more frequent select committees on public bills with the claims of the existing committees, and possible new committees, for the time and resources of the House. Indeed, in putting forward these options for the future, I would not wish the Committee to feel that full-scale enquiries on bills such as the Infant Life Preservation Bill were to be ruled out in the future. The Committee will also wish to consider the suggestions made in the accompanying papers, and there is no reason to assume that various experiments could not be carried out side by side, although considerations of membership and staffing would require careful thought. If the Committee does decide to pursue the special standing committee procedure, I would recommend an experiment. Paragraphs 11 and 12 lay out various options for the Committee to consider. In making its choice, the Committee may wish to bear in mind that the European Communities Committee and the Science and Technology Committee were both given broad terms of reference and allowed to work out their own best method of operating; and that the results have generally been regarded as a success. There are arguments both ways on the question of whether special standing committees would replace or complement committees of the whole House.

17. The value of an experiment on whatever option was favoured by the Committee would be that it would allow the House, with the benefit of advice from the Government, to judge whether such committees did indeed bring the benefits which this paper has suggested. Some of the various options for special standing committees would save time on the floor of the House. All would allow a proven strength of the House—the ability of select committees to look deeply into a particular subject—to be brought to bear on the House's primary purpose—the consideration and revision of legislation.

M A J Wheeler-Booth

25 July 1991

<sup>1</sup> The proportion of committee of the whole House time taken by bills sponsored by these departments in the four sessions 1985–86 to 1989–90 were as follows: Environment 10%–9%–31%–53%; Home Office 15%–6%–17%–6%; Law Officers'/Lord Chancellor's Department 1%–4%–5%–10%; Scottish Office 8%–37%–4%–4%.

**Memorandum by the Clerk of the Parliaments on a  
Select Committee on Environmental Impact Assessment**

1. In my initial paper to the Committee, amongst other suggestions for extending the Select Committee Work of the House into legislation, a suggestion for a committee on the environmental impact of bills was made, and after oral evidence, especially by the Reading Clerk (Q 40), this proposal was one of those on which the Committee asked for a paper to flesh out the idea. It may be thought that in view of the growing importance attached to environmental issues there is a case for examining all public legislation coming before Parliament to assess its impact on the environment. The promoters of certain private bills authorising works have just been made responsible by both Houses to provide an environmental impact assessment for their bills as proposed by the Joint Committee on Private Bills 1987–88 (HL 97 paragraphs 77–80, attached) and Private Bill Standing Order 27A agreed to on 15 July. And it is a central thesis of the Government's White Paper on the Environment (Cm 1200) that protecting the environment requires better information about what is happening to the environment. But there is no current requirement on the government (or other promoters of public bills) to produce environmental information in public legislation. The Committee may think that this is a gap which needs to be filled. Appreciative comments in written evidence to the Committee about the environmental reports of Lords Committees generally, including both the European Committees and Science and Technology Committees, suggest that the Lords may be able to fill that gap in an informed and non-partisan way.

2. A Committee to assess the environmental impact of all public legislation would examine public bills to answer two questions:

- (a) Does the Bill have an environmental impact?
- (b) If so, what is the environmental impact expected to be?

In reporting to the House, the Committee would be expected to give factual answers, insofar as it is possible to establish the facts of the case, rather than to express opinions about the desirability of the legislation. The objective would be to provide the House with an explanation of the environmental background to each bill, as a supplement to the financial and manpower information in the bill's Explanatory Memorandum.

3. The success of the Committee would depend on its ability to narrow down any differences of opinion about the environmental impact of bills. These factual issues could be clarified in evidence. It would be possible for peers to ask questions of experts direct, rather than in the difficult forum of debate across the floor of the House. The number of probing amendments would be reduced as a result, with some saving of time on the floor of the House.

4. The Committee's method of working would be similar to that of existing Select Committees which take evidence. Witnesses would submit written and/or oral evidence as required, and as time permits. The Committee might have a specialist assistant and would employ specialist advisers as needed. It would probably begin by taking oral evidence from the Government department or other promoter of the bill and then consider the views of interested parties and representative organisations.

5. Initially, a Select Committee could be set up to consider one or more bills as an experiment. If successful, a permanent Committee could then be set up to consider all public bills coming before the Lords. Consideration of many bills (approximately 75 per cent in the present session) would be brief, because they have no environmental impact. For the remainder, the Committee would be expected to complete its consideration within the usual legislative timetable for bills. The procedure would be designed to improve rather than to hold up the passage of bills.

6. Preferably, the Committee should make its report before the Lords Committee stage, ie about four weeks after first reading. This would increase the usefulness of the report and the amount of time on the floor of the House that might be saved. On the other hand this timetable would be very tight. In certain cases therefore the report might be delayed until before the Report stage.

7. Three factors might serve to make a report before the Committee stage feasible. First, the Committee could build up a network of witnesses and develop its own expertise, so that the submission and consideration of evidence would be streamlined. Secondly, the Committee would be concerned with only one aspect of the bill rather than all its details. Thirdly, since the most contentious bills tend to be introduced in the Commons, the interval between first reading in the Commons and Committee of the Whole House in the Lords would be nearer four months than four weeks. The preparation of evidence, if not the hearing of witnesses, could be carried out while the bill was in the Commons.



8. Some reluctance may be felt at the prospect of a Lords Committee considering a bill which is in the Commons. With this in mind, the House might wish to confine such consideration to the witnesses' preparation of evidence. Eventually, however, it might be acceptable, assuming that the Committee becomes established, for evidence to be heard while the bill is still in the Commons; this would be in the interests of the witnesses and would help the drafting of a comprehensive report. Such a procedure was in fact followed when the Lords Science and Technology Committee considered the scientific questions of nature conservation arising from the Environmental Protection Bill in 1989–90. Attention would need to be given to avoiding too heavy a burden on the civil servants responsible for the bill (the "bill team") if the bill were under consideration in both Houses simultaneously. The burden may however be more apparent than real: both Houses would come to expect the bill team to have made their environmental impact assessment before the bill was first introduced.

9. As with the other suggestions for Select Committees on legislation, I would suggest that initially there should be an experiment, without commitment. If it proved a success, it could become permanent.

M A J Wheeler-Booth  
25 July 1991

### Memorandum by the Clerk of the Parliaments

#### SELECT COMMITTEES ON DELEGATED LEGISLATION AND ON THE CONSTITUTIONAL IMPLICATIONS OF BILLS

1. A select committee to look at the proposals in bills for delegated legislation was considered by the House in a debate on 14 February 1990

Lord Rippon of Hexham rose to call attention to:

"The case for a select committee to scrutinise all bills coming before Parliament, and to report whether such bills contain insufficiently defined administrative powers or propose any inappropriate delegation of legislative powers; and to move for Papers."

2. In opening the debate Lord Rippon drew attention to the growing tendency for the executive to diminish effective parliamentary control and replace it by ministerial legislation in the form of innumerable rules, regulations and orders having the force of law. He also drew attention to "Henry VIII Clauses" namely clauses that give ministers power to amend or even repeal primary legislation by order.

3. Lord Rippon suggested a Committee to look at proposals for delegated legislation. He referred to the committee set up by the Australian Senate in 1981 which considers all draft bills and examines, among other things, whether they "make rights, liberties, and/or obligations unduly dependent upon insufficiently defined administrative powers" or "inappropriately delegate legislative power or insufficiently subject the exercise of legislative power to parliamentary scrutiny".

4. It is clear from the subsequent debate that many Members of the House felt that Lord Rippon had identified a genuine problem. Several speakers drew attention to recent cases where in their view the delegated powers being given by bills were sufficiently defined. In particular Lord Beloff drew attention to the student loans legislation which, as Lord Mishcon pointed out, was a short bill enabling a ministerial order to be made to establish whatever scheme the minister chose. Discussions of "Henry VIII" Clauses have occurred during debates on a number of other recent bills, notably the Child Support and Statutory Sick Pay Bills: see for example cols 499ff (25 June 1991) and 780ff (25 February 1991).

5. The Committee will be aware of the Joint Committee on Statutory Instruments, composed of Members of both Houses. It examines all delegated legislation laid before Parliament and some delegated legislation which is not laid before Parliament. The Committee's terms of reference are, however, very limited. It is empowered to draw instruments to the attention of both Houses on such grounds as defective drafting or unexpected or improper use of the powers delegated by the parent Act. The Committee does not have any power to comment on the merits of or the policy behind delegated legislation. Nor can it comment on proposals in bills themselves. This Committee meets and reports once a week when the House is sitting. Each report—made after advice from Counsel—usually draws several instruments to the special attention of both Houses, often on very detailed points of law. Thus several speakers in Lord Rippon's debate were able to say that a committee such as he proposed would complement rather than overlap with the work of the existing Joint Committee.

6. The Committee may wish to consider, as a matter of general principle, whether Parliament has sufficient scrutiny powers over the executive's use of delegated legislation. It is certainly true that once power has been delegated to Ministers, Parliament has little direct control over how that power is exercised, except through the work of the Joint Committee although Parliament does have some influence through debate. Instruments are occasionally withdrawn and modified in response to parliamentary criticism. Affirmative instruments need to be approved by both Houses but in almost all cases they cannot be amended by Parliament. By convention, this House no longer rejects affirmative instruments<sup>1</sup>. Debates in the Commons on affirmative instruments often take place late at night or in a Standing Committee rather than on the floor of the House.

7. Negative instruments too cannot be directly amended by either House. "Prayers to annul" negative instruments are now quite regularly debated in this House, but by convention the Lords does not reject negative instruments. It is, however, possible for this House to pass a motion calling on the Government to revoke or amend an instrument. The position in the Commons is well set out by a recent academic work on Parliament<sup>2</sup>: "... motions for ... annulment cannot be made unless time is provided, and in practice the right to move prayers is limited by the control of the Government over the time of the House and over the reference of matters to committees. Thus the Government is able to prevent criticism of its delegated legislation, despite the fact that statutes provide formally for such criticism ... The percentage of undebated prayers is growing ...".

8. The Committee may therefore wish to consider whether a committee such as that proposed by Lord Rippon would enable Parliament to exercise more effective scrutiny of delegated legislation, albeit at a very early stage before instruments themselves are available for consideration. They may also wish to consider what form a committee such as that proposed by Lord Rippon could take. The Australian Senate's "Scrutiny of Bills" Committee provides a precedent, as Lord Rippon himself recognised. A full account of the Committee and its work is set out in a paper submitted to the 1989 Commonwealth Conference on Delegated Legislation and is available in the Library. The committee scrutinises bills to ensure that they provide for the proper use of delegated powers. Two examples are given of this aspect of the committee's work: "where the entire content of a definition central to a scheme of industry assistance is left to regulations or where a fee, charge or levy in the nature of a tax is left to be set by regulations without specifying a maximum level of imposition". The committee has also taken a keen interest in Henry VIII clauses.

9. The Australian committee does not, however, have unlimited terms of reference. It does not consider the broad principles of policy in bills. This helps to preserve its all party character. It cannot amend bills, but draws matters to the attention of the Senate. Thus Parliament is able to legislate "with open eyes".

10. The Australian committee is small and meets weekly to consider all bills introduced in the Senate during the previous week. It can comment informally on bills introduced into the lower house but can only report formally on bills once they are introduced into the Senate.

11. The Committee may wish to consider whether the Scrutiny of Bills Committee provides a precedent that could suitably be followed in this House. It would seem at the very least that any such committee established here would need the power to hear evidence of why the government needs the powers to be conferred by proposed delegated legislation. (The Joint Committee has power to take evidence but only on matters within its terms of reference.) It would also need to conduct its work at an early stage of a bill's progress. Its workload would depend on the number and nature of bills presented and would probably be heavier at the start of a session, when the House itself is less busy. Thus it might be possible for Members of the House to devote a reasonable amount of time to its work.

12. My earlier paper also referred in passing to a committee on the constitutional implications of bills. A number of other Commonwealth countries have a committee which examines a bill's relationship with the existing constitution. But such a committee would be of less value in this country as we do not have a written constitution. It would, however, be possible to establish a committee to look at the relationship between proposals in a bill and the existing statute and common law and in particular to scrutinise any proposals to impose new penalties or new offences and to compare them with previous legislation. This would cover the possible implications of such proposals for the workload of the civil or criminal courts, especially where a new jurisdiction is involved or where a new indictable offence is to be established. The Committee may wish to consider whether such work would be of value and suited to the special expertise of Members of the House. If required a further note could be prepared.

M A J Wheeler-Booth

25 July 1991

<sup>1</sup> The only example since 1945 is the rejection of the Southern Rhodesia (United Nations Sanctions) Order 1968.

<sup>2</sup> Griffith and Ryle: *Parliament—Functions, Practice and Procedures* (Sweet and Maxwell 1989) 345.



### Memorandum by the Clerk of the Parliaments

1. This paper seeks to deal with a number of *miscellaneous matters* not dealt with in my earlier memoranda to the Committee, nor when I gave oral evidence. They are matters which the Committee may feel worth mentioning in its report given the wide-ranging nature of its review. I would, of course, be happy to attend the Committee again if it so wishes.

#### RELATIONS WITH GOVERNMENT DEPARTMENTS

2. As the Committee will have observed, a substantial part of the Commons' Procedure Committee report on their committee system was concerned with the relationship between select committees and the Government and with the powers of committees. I would not wish to give the impression that over the years this has been an area which has been wholly free from difficulty in the House of Lords. There have, of course, been occasional difficulties: from time to time, for example, there have been problems over the deposit in Parliament of certain categories of European papers, and, to take a specific instance, there were difficulties in 1987 during the Science and Technology Committee's enquiry into Space Policy over the co-ordination of Government evidence. Nonetheless, in general terms Lords' committees have come to enjoy good relations with Government Departments and I suggest that the Committee need not feel it necessary to investigate this area further. In any event, the Commons' report and the subsequent response by the Government dealt with the various aspects of the matter exhaustively.

#### FINANCES AND EXPENDITURE OF SELECT COMMITTEES

3. I understand that the Committee is anxious to learn more about the costs of Lords' select committee work. At the outset I should explain that at the present time the House is in process of implementing a number of the recommendations of the report of the Committee chaired by Sir Robin Ibbs (Commons Paper 38, session 1990–91) on House of Commons Services. That report sought to strengthen financial management and to that end recommended that the "allied service" arrangement, whereby spending on works and on printing and office equipment are paid for on the Votes of the Department of the Environment and HMSO respectively, should be discontinued. These changes, once fully implemented, should ensure that the offices within my department, such as the Committee Office, have more information about the cost of what they do and more responsibility for setting budgets and monitoring expenditure.

4. However, financial control is already exerted with regard to select committee expenditure. The estimates for the House of Lords Vote are approved annually by the Finance and Staff Sub-committee but only after detailed examination by offices analogous to the Public Expenditure Survey system. In certain respects, expenditure on committee work, like some other activities of the House, is demand led and cannot therefore be strictly controlled. In other areas it is easier to set an estimate of likely expenditure for the year and to expect that estimate to be met. Costs which can at present be identified clearly are as follows:

Costs	£	
	1989/90	1990/91
Staff costs <sup>1</sup>		629,630
Official Shorthand Writer	93,528	97,666
Visits by:		
(i) European Communities Committee	38,363	31,910
(ii) Science and Technology Committee	30,231	17,427
Total:	68,594	49,337
Specialist Advisers	37,857	54,109
Witnesses (expenses and interpreters' fees)	4,060	3,449
Entertainment (eg lunches given for distinguished witnesses)	877	1,314
Miscellaneous costs (Publications purchased, course fees, overseas postage)	1,454	2,202
Printing: <sup>2</sup>		
Gross Costs	566,663	769,294
Revenue	233,649	302,482
Net Cost	333,014	466,812

<sup>1</sup> Current staff (including national insurance contributions, but excluding superannuation benefits, pay and establishment costs etc). This figure includes the salary paid to the Principal Deputy Chairman of Committees. The staff consist of nine clerks of various grades (one assigned to the Committee Office on a temporary basis), a Legal Adviser, a Legal Assistant, a Specialist Assistant, a Senior Personal Secretary, seven Personal Secretaries, an Executive Officer and two Clerical Officers. This expenditure represents some 29 per cent of the total expenditure on staff in the central offices of my Department (ie excluding the Offices of *Hansard*, the Record Office, the Library and the Refreshment Department).

<sup>2</sup> HMSO have given this estimate of their printing and publication costs, including the revenue from sales of reports to Parliament and the public.

5. There are various costs, some of them considerable, which are not at present identifiable between individual offices but which are budgeted centrally. These include telecommunications, stationery, accommodation and works. In addition, Lords are entitled to claim reimbursement of expenses in respect of attendance at meetings of select committees, regardless of whether they attend the House later on the same day. It is not possible to state accurately the cost of such expenses claimed solely for attendance at committee meetings: the Accountant informs me on the basis of claim forms that they are not substantial.

6. On the basis of the costs which are at present available, it is possible to make the following estimate:

Breakdown of the cost of committee activity	%
Peers' Expenses	6
Staff (excluding Specialist Advisers)	50
Specialist Advisers	4
Printing (net*)	25
Gurneys Shorthand Writers	8
Travel	4
Other	3
Total	100

\* Gross cost of printing less revenue from sales.

STAFF

7. I touched on various aspects of the staffing of select committees when I gave oral evidence to the Committee (Q 23). I confirm my view that committees are staffed economically. Leaving aside the legal advice available to the European Communities Committee and the specialist assistant who works for the Science and Technology Committee, each sub-committee (which to all intents and purposes operate in the same way as full select committees in the Commons) is staffed by a clerk and a personal secretary. Indeed, over the years a single clerk has often looked after two committees simultaneously and I believe that this remains feasible in some circumstances provided sub-committees do not set themselves schedules which are too demanding. The overall level of support is less generous than that available to the Commons' departmental committees; even so the Clerk of the House of Commons in his evidence to the Procedure Committee described the overall staffing system in that House as deliberately lean with no room for savings. I make the same observation about the Lords' committee structure. As I said in oral evidence, there have been occasions when individual members of staff have been overworked, sometimes as a result of committees taking on too much work without adequate regard to available resources.

8. In paragraph 33 of my first memorandum to the Committee I explained that nearly 50 per cent of the clerks in the Parliament Office currently work in the Committee Office and that the employment of more clerks could create problems for the career structure. The Committee may also wish to consider the additional point that it could be undesirable for too great a percentage of the senior staff of the House to be devoted to a single activity of the House, no matter how important. There is also inevitably some constraint on the availability of office accommodation within the Palace of Westminster.

9. The Committee may not wish to make detailed recommendations about staffing levels. I will, of course, consider those recommendations with staffing implications and in due course put proposals to the Finance and Staff Sub-committee. The Leader of the House is a member of that Sub-Committee and through him the views of the Government about any increase in financial provision can be made known.

THE ROLE OF SPECIALIST ADVISERS

10. The use to which sub-committees have put specialist advisers varies a good deal but the main features of their role include analysing written and oral evidence, preparing possible questions for witnesses, assisting in the preparation of briefs and, to a lesser extent, in the drafting of reports and giving advice to Members. The Committee has already heard of the many advantages of using specialist advisers: the Commons' Procedure Committee report described the system as "flexible, economical, effective . . . and preferable to establishing a standing army of Parliamentary experts." I agree with that assessment. In the Lords specialist advisers have for many years made a major contribution to the work of committees and at a relatively low cost.

11. I would not wish to give the impression, however, that it is a system which always works smoothly. Most specialist advisers are very busy people and do not always find it easy to work to committee deadlines. In addition, it can be difficult to find a potential adviser with appropriate specialist knowledge in time for him to make a useful contribution at the early stages of an enquiry. This is a particular problem for the European Communities Committee which increasingly has to work to tight timetables. Finally, it would be wrong to over-estimate the contribution which specialist advisers make to the preparation of committee reports. In the majority of cases it is the clerk with his more general knowledge and experience who must do the bulk of the work.



12. There are two suggestions I would like to make in this area. First, I believe there may be advantage for some sub-committees in the establishment of a panel of specialist advisers to whom they could turn for appropriate advice. This would be particularly useful for sub-committees which regularly return to topics in the same broad area. Second, sub-committees may wish to consider making more flexible or selective use of specialist help, using advisers rather more as a consultancy resource than as full members of their staff team. Very often the vital contribution which advisers can make is to tell the committee at an early stage in an enquiry what questions to ask and of whom, and this can often be done without regular attendance at the Committee and without an enormous amount of work.

#### SELECT COMMITTEE VISITS

13. Both the European Communities Committee and the Science and Technology Committee have found that travel, whether in the United Kingdom or abroad, has made a useful and stimulating contribution to their work. Details of the costs of such travel are given above. Their cost is less than 5 per cent of the total cost of committees. In the case of each proposal for a committee visit, the purpose of the visit and the number of Members involved are first discussed with the Clerk of Committees and the Chairman of the main Committee involved. Thereafter specific financial authority must be sought from the Chairman of Committees and the Clerk of the Parliaments, who must be satisfied that certain guidelines laid down by the Finance Sub-committee have been observed. These guidelines are designed to ensure that regard has been had to the cost to public funds; that the visit is kept as short as possible; and that in the interests of efficiency and economy only a restricted number of members take part in a visit. I am satisfied that these procedures ensure that there is proper financial control over committee travel.

14. As the Committee will by now appreciate, the various possibilities for increased co-operation between national parliaments and the European Parliament may lead to rather more travel by the European Communities Committee. If necessary, and subject to the approval of the Finance and Staff Sub-committee, estimates for committee travel can be adjusted in future years to take account of this. The sums involved in travel to the Community Institutions are relatively small compared to the costs of travel further afield which take up a large proportion of the total costs of committee travel set out in paragraph 4 above.

M A J Wheeler-Booth

15 January 1992

#### Memorandum by the Gentleman Usher of the Black Rod

#### SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE

In your memorandum of 16 October you asked for my views on Committee Room accommodation in the context of Committee work of the House and on certain related matters.

Within the Palace there are six Committee Rooms and the Moses Room which are suitable for formal Committee work. Two of the Committee Rooms are normally at the disposal of the Judicial Office for the Appellate Committees. Of the remaining four rooms two can be adapted to form a single, large Committee Room. This room may then be required for prolonged periods, as occurred during the examination of the Channel Tunnel Bill, thus reducing availability to two Committee Rooms and the Moses Room.

Peers' private meetings are held in the Committee Rooms when they are not in use by Select Committees. Private meetings are also held in a Conference Room at 1 The Abbey Gardens and in the small Television Interview Room.

A careful review of the use of all rooms during the period 15 April to 25 July 1991 confirms that the greatest demand for all purposes arises from Tuesday to Thursday inclusive. On Mondays and Fridays, and on most evenings from 5.30 pm, rooms are under-used. The pattern of usage over the period also points to a need for greater discipline in the programming of meetings, both formal and private. A forecast of the formal committee needs is vital if Peers' interests in private meetings are to be serviced without acrimony.

Any increase in Select Committee work would create substantial difficulties if the demand were directed only towards the Tuesday to Thursday period each week. Short, regular meetings could be more readily accommodated than those requiring the use of a room for a period of weeks, but it is inevitable that Peers' private meetings would suffer. Whilst private meetings can be diverted to No 1 The Abbey Garden when there is a willingness on the part of the sponsor to hold a meeting outside the Palace, there would be little room for manoeuvre.

You will understand that these remarks take account of the fact that the Moses Room is now being used far more intensively and that from time to time the Commons give assistance on an *ad hoc* basis to accommodate private meetings. I can confirm that meetings of Joint Committees are also held in Commons Committee Rooms on occasion.

My conclusion is that some increase in Select Committee work would be tolerable if business could be extended to include on a regular basis Mondays and Fridays each week and possibly into the evenings when the House is sitting. To make the best use of available rooms a reliable programme of formal work is needed ahead of each term and I would favour in addition a restraint upon the booking of rooms for private meetings more than one month ahead. Without such changes in the routine of business any substantial increase in demand for Committee Rooms must lead to a bid for further space.

The issue of acoustics in Committee Rooms is, I suggest, another matter. There are substantial problems to be resolved and I shall be seeking solutions in consultation with the Works Office.

BLACK ROD

14 November 1991

### Memorandum by the Librarian

#### LIBRARY SERVICES FOR THE SELECT COMMITTEES

1. I understand that the Committee on the committee work of the House will soon be considering its report. The Commons Procedure Committee review of Commons committees work in 1989–90 gave specific consideration to the services which could be provided by the Library in that House. Accordingly, it might be helpful to set out the services which the House of Lords Library can provide for Select Committees.

2. The Library has provided assistance to Select Committees, at the request of the clerks, on an irregular basis. This has included the preparation of statistical tables; the provision of press cuttings; checking addresses of likely witnesses; the purchase of books and periodicals. Moreover, the Library supplies documents as requested by the Specialist Assistant to the Science and Technology Committee for his use.

3. The Library is able, from its existing resources, to provide the following services for a Select Committee:

(i) The preparation of background material for a new enquiry with the provision of books, official documents, periodical articles and press cuttings, both from the Library's own holdings and from other libraries. The research staff could provide an annotated list for initial consideration and, at a later stage, the material requested by the Select Committee. These lists could also assist the Select Committee in identifying the leading experts in the relevant field.

(ii) Written briefings in answer to a specific enquiry from a Select Committee.

4. The Library can provide this support to any of the investigative committees of the House. Given the permanent staff support available to the European Communities Committee and to the Science and Technology Committee, it is likely that the Library's most effective contribution would be in support of *ad hoc* Committees established to consider particular issues. In order to facilitate the use of these services by Select Committees, the Senior Library Clerk could be nominated to liaise with the Committee Staff.

D L Jones

Librarian

2 December 1991

### Letter from the Clerk to the Supervisor of Parliamentary Broadcasting

I am writing as clerk of the Lords' Committee currently reviewing the committee work of the House. The clerks of the two Broadcasting Committees, David Doig and Mary De Groose both suggested I should write to you.

The Committee are taking the view that in due course remote-controlled cameras should be installed in one of the Lords' committee rooms. I really wanted to establish the factual position regarding remote-controlled cameras in committee rooms and would be grateful if you could confirm—over the telephone if this is easiest—that the following is accurate:—

(i) The Broadcasters have not been prepared to fund the installation of remote-controlled cameras in committee rooms. It is only with the assistance of public funds that arrangements are in hand for two Commons' committee rooms to be equipped in this way. There is a considerable capital



investment involved: the equipping of a single room costs in the order of £100,000 a year. Such cameras are already operational in one committee room. Capital costs may be reduced in due course. Manned cameras are still used in other Commons' committee rooms if proceedings there are to be televised.

- (ii) The lighting in one Lords' committee room (No 4) has been up-graded and is now suitable for televising.

I hope the above is about right? It would be very helpful if you could let me know in the next week or so as the Committee will shortly complete its enquiry.

M G Pownall  
17 January 1992

#### **Letter to the Clerk from Mr John Grist, Supervisor of Parliamentary Broadcasting**

Dear Michael,

In reply to your note of 17 January, all you assumptions in paragraphs 3 and 4 are accurate.

Your Committee might like to consider the possibility of spending between £15,000 and £20,000 on Committee Room 4 so that the mobile remotely controlled equipment in use in Committee Rooms 15 (and from October 1992) 8, could be moved into Committee Room 4 for television purposes. The equipment in Rooms 15 and 8 is mobile and there is no technical reason why this scheme would not work.

This is merely a suggestion which you might like to consider.

21 January 1992

#### **Memorandum by the Advisory Council on Science and Technology (ACOST)**

ACOST welcomes this opportunity to set out its views on the work of the House of Lords Select Committee on Science and Technology.

2. Science and technology is a subject which crosses departmental boundaries. In ACOST's view, it is therefore a prime candidate for coverage by a House of Lords committee. The House of Lords is also well qualified to form such a committee by virtue of its wealth of science and technology expertise.

3. The Council believes that the House of Lords Select Committee on Science and Technology serves an important and useful function and that its reports are generally of a high standard. Although it is always difficult to assess the precise effect of such reports, we believe that the reports have often helped to produce change.

4. We believe that the Committee's method of inviting written and oral evidence from knowledgeable organisations and individuals is effective. However, while such evidence gives a view of attitudes, it should not be a substitute for rigorous analysis. Whenever possible, reports should therefore include reliable statistical, economic and analytical information.

5. The topics which the Committee has selected for study have varied considerably in importance, and we have some doubts as to whether they have always been well chosen. Wider consultation on topics for study might be worth considering. Such consultation would also help to minimise duplication with the activities of other bodies.

6. Science and technology issues are often inextricably linked with wider policy questions. Although ACOST is not qualified to comment on the working of the Select Committee system in general terms, the Council believes that it may therefore be worth considering the scope for the Committee to work more closely with the House of Lords European Communities Committee and *ad hoc* House of Lords committees as and when this would be appropriate. This might include considering whether it would be appropriate in some circumstances for the Committee to advise on science and technology aspects of issues being tackled by these other committees. Whether it would be desirable, and practicable, for the Committee to conduct joint studies with other committees might also be considered.

16 August 1991

### Letter from Professor Tom Blundell, FRS, Secretary, Agricultural and Food Research Council

Thank you for your invitation of 12 June to submit evidence to the Select Committee on the Committee Work of the House of Lords.

The Council has welcomed the many opportunities it has been given to contribute to public debate on important scientific issues by written and oral evidence to the inquiries of the Select Committee on Science and Technology and the European Communities Committee. The Committees have covered a wide range of issues relevant to the Council's interests in science and the administration of science in the United Kingdom and internationally. The Select Committee on Science and Technology's Inquiry into Agricultural and Food Research in 1988 was, at the time, of particular significance for the Council and represented a major contribution to the debate then in progress on the organisation of the Science Base. The Annex to this letter gives a list of the Parliamentary Select Committee Inquiries to which AFRC has contributed evidence since 1989.

From this experience the Council would give unqualified support to the work of the House's Select Committees. In particular the Select Committee on Science and Technology is the only Parliamentary forum where scientific issues of public concern are considered in depth in a systematic way. The effectiveness and strength of the system derives to a large degree from the number of distinguished scientists and engineers from a wide range of disciplines who make up the membership of the Committees. The European Communities Committee has a vital rôle in ensuring a thorough examination of the scientific and technological context and assumptions of proposed European legislation.

The Council's experience in considering and commenting on the Select Committee Reports show that they carry weight, are widely read and discussed in the scientific community and raise the profile of scientific and technological issues, so assisting with their resolution by Government and the United Kingdom scientific institutions.

The Council has no major suggestions for changes in structures or subjects. The AFRC's area of interest crosses departmental boundaries through the lines of support it receives from the DES Science Budget and the Ministry of Agriculture's programme of commissioned research—cross departmental issues specifically addressed by the 1988 Inquiry.

On working methods the system of written and oral evidence works well and the opportunity to provide supplementary evidence or opinion ensures ample flexibility for debates to be carried forward very constructively within the course of an inquiry. At the same time it is clearly helpful for organisations contributing oral evidence to have as much notice as possible, within the timetable available for the Inquiry, of the issues members of a Select Committee intend to pursue at the oral session.

For the future the members and staff of the Council will continue to offer every possible assistance with the work of the Select Committees under whatever arrangements result from the work of the Select Committee on the Committee Work of the House.

9 July 1991

### Memorandum by the Association of County Councils

#### PROPOSAL FOR A NEW SELECT COMMITTEE ON CENTRAL/LOCAL RELATIONS

1. The Association is the representative voice for the County Councils of England and Wales speaking for some 30 million inhabitants of the non-metropolitan areas.

2. The Association is aware of the evidence submitted to the Committee by Mr Vernon Bogdanor arguing for the extension of the work of the House in developing studies of public policy by the creation of a new Select Committee for central/local relations, and the memorandum prepared by the Association of Metropolitan Authorities detailing the way in which such a Committee might work. This short paper generally supports these contributions but seeks to widen the remit so far suggested.

3. We support in particular:

(i) *A post hoc consideration of statutory controls:*

indeed, the Local Authority Associations some years ago prepared a compendium of such powers which could be a useful starting point for a major study.



- (ii) *A longer term look at the overall trends in the central/local relationship:*  
this could be on a comparative basis.
- (iii) *A study of the way in which, and the extent to which, meaning is given to the notion of local accountability.*

4. The Association has knowledge of the work of the Select Committee set up by the House on European Communities and that for Science and Technology. Both have produced excellent reports. The first has terms of reference specifically designed to allow it to study individual subjects in depth. The latter undertakes often quite lengthy enquiries on matters of vital public concern. Work of this kind is greatly valued, has influence and enhances the perceived value of the legislature.

5. A select committee focusing on the relationship between central and local democratic systems might cover other issues such as international perspectives on the actual operation of local democracy, and the relationship of local democratic government to other parts of society such as industry and trade, the media, other public services, and so on. We would like to see such a Committee operate in a pro-active way, evaluating proposals from the local authority associations, government departments and academics.

6. This paper therefore supports the call for a new Select Committee of the House to deal with this area. It realises that such a development would have cost implications, but would argue that no area of concern should be of more relevance to the *raison d'être* of the House than the priorities of democracy itself, and the promotion of local self-government as one of its strongest expressions.

15 November 1991

#### **Memorandum of Evidence by the Association of Metropolitan Authorities**

##### **A NEW SELECT COMMITTEE ON CENTRAL/LOCAL RELATIONS**

1. The Association represents all 36 metropolitan district councils, 30 London boroughs and the City of London. In addition, the 19 joint authorities responsible for police, fire and civil defence, and public passenger transport, are corporate members of the Association. The Association acts wherever possible on the basis of political consensus within its own ranks and in concert with the other local authority Associations. Members of the Association are responsible for every aspect of local government in their areas.

2. This memorandum suggests that the House of Lords might consider establishing a new permanent sessional Select Committee on central/local relations, and explores some of the areas which such a Select Committee might examine. This proposal is founded on the Association's concern that fundamental changes in the relationship between central and local government have been wrought over a number of years in a piecemeal fashion and with little reference to the constitutional implications involved. At the same time, the Association recognises that there is a legitimate debate over the proper role of local government *vis-à-vis* central government, and the right of central government to effect change in response to a popular mandate. It believes, however, that a Select Committee constituted in the Upper Chamber could form a very useful stimulus to informed public debate of the issues involved. The independent role of the House of Lords within Parliament and the wide-ranging experience of its individual members would make the creation of such a Select Committee particularly appropriate.

3. It is suggested that there are four main areas in which such a Select Committee could be relevant. The first draws on the House of Lords' established role of scrutinising legislation. The remainder fall within its more recent role of undertaking expert examination of current issues. In neither case, however, would it be necessary for such a Select Committee to duplicate work already carried on in the House of Commons or elsewhere. In particular, a Select Committee on central/local relations would by its nature range more broadly than the work of the Department of the Environment or the associated sections of the territorial Departments. The Committee would thus have a different remit to that of Commons Select Committees, and could be expected at different times to consider matters relevant to Health, Transport, Home Affairs, Arts and Education where relevant to local government. The purpose in each case would be to examine not specific policy issues concerned, but the impact of any proposals or existing practice on the overall balance of central/local relations.

#### **STATUTORY SCRUTINY**

4. The first possible area of scrutiny by a Select Committee would be the examination of the impact of statute on central/local relations. It should be stressed that there is no suggestion that the work of such a Select Committee should pre-empt or repeat scrutiny by the House as a whole of the merits or drafting of particular statutory proposals. Nor would the Select Committee be expected to stray into questions of the *vires* of

primary or secondary legislation, which are already the subject of scrutiny elsewhere. By its nature, the Select Committee would examine legislation across the whole range of relevance to local government and would not, therefore, be expected to duplicate the work of existing Commons Committees.

5. There is now considerable concern across a range of informed observers that central government continues to gather to itself wider and more numerous powers, which are eroding the basis of a proper relationship between the centre and the locality. As the House itself heard in its debate on 31 January 1990, there has been a 40 per cent increase in the use of statutory instruments between 1979 and 1989 (1770–2510 per annum). The use of primary legislation to establish secondary powers is not only being used more frequently—typically many dozens if not hundreds of times in the course of a large contentious bill—but there is a suspicion that the nature of the powers being taken is changing. Central government increasingly presents draft legislation to Parliament whose substance lies in the subsequent statutory instruments and regulations, and Government Ministers almost routinely present “framework” legislation before both Houses. The increased pace and scale of draft legislation has introduced at least the fear that the detailed implications of proposals are often worked out after rather than before their enactment.

6. On this basis, a Select Committee could analyse the range of powers available to central government, and develop a model of such powers applicable to different situations relevant to local government. It might, for example, distinguish broad-ranging and general powers from those governed by tightly drawn procedures. The former might be relevant in areas of new policy; the latter as the basis of ministerial intervention in a well-recognised process. Both local and central government would doubtless have substantive views on the form which such a model would take.

7. A Select Committee could monitor the totality of powers taken by central government in legislation, drawn from a retrospective scanning of statute and balancing those newly-acquired with others lost through repeals. It would then be in a position to publish regular reports, which would provide useful information for subsequent Parliamentary scrutiny and generally encourage debate.

8. As well as examining the statute book itself, the Select Committee could conduct selective retrospective inquiries into the utility of powers, their frequency of use and the process (if any) of subsequent Parliamentary scrutiny. This is not to suggest that the Select Committee would wish to be drawn into judging the merits of particular powers taken. The concern is the growing suspicion that many powers taken under legislation are used only rarely, if at all, in the subsequent implementation stage. Were this suspicion to prove the reality, the work of a Select Committee could provide Parliament with a measuring rod against which to assess the subsequent granting of wide-ranging powers. Indeed, knowledge of the occasional examination of subsequent practice could itself operate to influence Government in its choice of powers.

#### THE CENTRAL/LOCAL RELATIONSHIP

9. Whatever view may be taken of the widespread changes which have affected local government over the past decade or so, there can be little doubt that the central/local relationship is unstable and there is no general consensus as to the desirable balance. From local government's viewpoint, incremental but major changes in over 50 major Acts of Parliament have amounted to a fundamental reordering of that relationship. Changes in the course of the 1980s have included: ever-more detailed expenditure control, culminating in rate and community charge capping; the introduction of the compulsory exposure of certain services to outside tender; the abolition of the strategic tier of local government in the metropolitan areas and London; the rewriting of the responsibilities of local education authorities under the Education Act 1944; the introduction of the community charge and the removal from local authorities of the power to raise business rates. Whatever view is taken of the merits or otherwise of these proposals, the effect both individually and cumulatively on the local side of the relationship has been serious. Local government—as opposed to local administration—has been seriously weakened, perhaps irreparably. Yet their constitutional impact, whether desirable or otherwise, has rarely formed the basis of the debate. Parliamentarians and observers frequently raised concerns as to the constitutional implications involved. In most cases, however, there has been a fundamental lack of information on which to ground such concerns and demonstrate the relevance of the particular to the general. The present Government has announced plans for further widespread changes affecting local government in relation to finance, structure and the carrying out of functions. These include: the further diminution of the local tax base; the extension of compulsory competitive tendering to core services; the introduction of bidding by authorities to central government for resources; the review of the place within local democratic control of such services as the Fire Services. The Department of the Environment's current consultation paper on the Internal Management of local authorities, and the White Paper “The Citizens' Charter” (July 1991) both raise fundamental questions of the proper boundary between centre and locality. Likewise, the increasing tendency of central government to set standards for the provision of local authority services threatens a delicate balance of functions. Parliament has few measures against which to assess the constitutional implications of such proposals, and the public and academic observers have no picture of the overall trend, other than a subjective one.



10. It is not suggested that the Select Committee would wish to involve itself in the Parliamentary discussion of contentious proposals at the legislative stage, although it would presumably be open to it to examine specific instances. (Precedents would seem to include the work of sub-committees of the Select Committee on Science and Technology on Nature Conservation in 1990, in the context of the Environmental Protection Bill, and the scientific implications of GLC/MCC abolition produced shortly before debate on the Local Government Bill 1985). In general, however, it is envisaged that the Select Committee would look retrospectively at the overall trend, and possibly attempt a regular analysis of the central/local balance and its nature.

11. More broadly, the Select Committee might wish to consider and report on the desirable basis of the central/local relationship, which would doubtless involve international comparisons and consideration of both theory and practice. The European concept of “subsidiarity”—the devolution of government to the lowest practical level—is finding increasing application in the domestic context, and in particular in relation to local government. The European Charter of Local Self-Government sets out basic principles which it is suggested should govern the central/local relationship. The Select Committee might wish itself to suggest such principles in the light of recent experience in this country. One area which might merit particular examination would be the contention that aggregation in the powers of one tier necessarily reduces those of the other. There may be models, which a Select Committee could be instrumental in promulgating, whereby the capacity of the public sector as a whole to respond to needs is increased by a proper division of general and specific powers between the centre and the locality, while not stifling proper innovation at the latter level.

#### DEMOCRATIC ACCOUNTABILITY

12. Much of the recent debate as to local authorities’ functions and powers has been occasioned by the expressed concern of central government to increase local accountability. The Government has considered that local authorities deliver services and take financial decisions in a remote way, and that greater transparency in their activities is desirable. This argument was strongly advocated, for example, as a justification for the introduction of the community charge. Such arguments have distracted attention, however, from some of the major constitutional implications of recent changes, a number of which have substantially altered the central/local balance in the opposite direction. In the case of the community charge, for example, the associated degree of influence assumed by central government over local budgets—notably by the parallel removal of the setting of local business rates from authorities—has resulted in a marked **increase** in central control over local finances, and a degree of blurring in local financial accountability which has been widely criticised. The fiscal autonomy of local authorities is now seriously compromised. Central government provides some 85 per cent of the revenue spending of local authorities, and the “gearing effect”—the multiplier effect on local taxation of smaller variations in overall spending—reaches 11:1 in some local authority areas. Central government control is increased by the new practice of requiring authorities to compete for central funding of projects under schemes such as the recent “City Challenge” initiative.

13. The inter-relationship of an expressed aim of increasing consumer accountability with the practical effect of strengthening central powers also needs urgent examination. This linkage of issues of local accountability to central influence is likely to prove increasingly relevant if functions are further devolved from local authorities to individual institutions, notably in the education field. Current policy envisages the independence in the future of most schools and all further education establishments from local education authority control. Questions remain unaddressed of the effect of such proposals on the structure or financing of local government, and of the location of real control over the provision of education. Budgeting control, for example, will pass to the institutions themselves, under the overall vetting and direction of the Secretary of State or a funding council (in the case of FE). The issue has yet to be addressed whether heads and principals of such institutions will be sufficiently publicly accountable. The controls and regulations required in such a case to be vested in central government or its appointed agencies may necessarily be considerable. The effect on the overall balance of centre and locality of replacing local authorities with smaller autonomous local units could in the future benefit from closer examination. This trend can be expected to increase as more inducements are given to institutions of various types to leave the local government ambit.

#### NEW DEVELOPMENTS

14. A Select Committee could operate as a forum for the discussion of new ideas and developments relevant to local government. Central government might, for example, find it useful to canvass support for proposals still under consideration alongside more general public consultation. Thus proposals from Whitehall on functions or the role of local authorities might usefully be submitted to a Select Committee as part of the consultative process. Both local and central government have, for example, been involved in recent years in exploring the concept of the client/contractor split, which is now being applied in different ways by local authorities of their own accord and under legislation. The implications for the role of local authorities as accountable bodies, operating under statute, might have formed a relevant area of inquiry. Central government has recently proposed the creation of an Environmental Protection Agency incorporating waste regulation functions of local authorities. The precise policy implications are properly a matter for expert and public consultation. The impact on central/local relations, however, might be a matter which could properly

be examined by a Select Committee. In the same way, individuals may have proposals or evidence which a Select Committee might wish to pursue. Local government itself might in a variety of ways wish to suggest areas for scrutiny. Local authorities have argued for a number of years for powers to undertake limited trading, and for a “power of general competence” which would enable them to undertake any lawful activity not prohibited by statute. The view of a Select Committee on the merits or otherwise of these proposals in the context of the central/local balance would be of enormous assistance to the debate.

#### CONCLUSION

15. In a unitary state without a written Constitution, the relationship between central government and lower tiers is bound to be fragile, based on legislation which is not entrenched. The conventions which safeguard the national constitution do not extend to the local tier. Local government in its modern form is a creature of central government, yet for that very reason local authorities need, if they are not to operate merely as agents of Whitehall, a proper relationship in which a degree of autonomy is recognised. The decade of the 1980s has seen an unprecedented erosion in the powers, status and functions of local government in the United Kingdom. The debate around individual changes, however, has been conducted only occasionally against this background. Parliament and the public have lacked the information against which to assess claims and counter claims on constitutional issues. Unease, however, amongst informed observers at the state of central/local relations now goes far beyond those involved in local government itself. The creation by the House of Lords of a Select Committee in this area would perform a most valuable public service in enabling a proper and informed debate to take place on a matter of significant constitutional importance.

14 October 1991

#### Memorandum by Mr Vernon Bogdanor, Reader in Government, Oxford University and Fellow of Brasenose College

1. This memorandum argues that the main role of the House of Lords ought now to be to act as a chamber of experts; that it should bring its expertise to bear on legislation through the establishment of special standing committees on bills; and that it should establish two further permanent sessional Select Committees, one on central/local relations and the other on justice.

2. A review of the committee work of the House of Lords might legitimately begin by asking the prior question—what role should the House of Lords play within our parliamentary system? In 1918, the Bryce Committee suggested that the primary functions of the Lords included the examination and revision of Bills brought from the Commons, the initiation and discussion of non-controversial Bills and “the interposition of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it”. There should also be full and free discussion of current policy issues which the Commons might not have time to consider. The Bryce Committee, therefore, took the view that the Lords should be primarily a legislative chamber whose main function was one of revising bills. More recently, however, the view has been taken that the House of Lords should seek a different role, that of bringing expertise to bear upon issues of public policy. One’s view as to the proper function of the House of Lords will largely determine one’s view on the role which committees might play in its proceedings.

3. The conflict between the two views mentioned above—that the House of Lords should be primarily a legislative chamber, and that the House of Lords, being composed on a different basis from the Commons, should be primarily a chamber seeking to exert influence based on expertise—was apparent in much of the evidence given to the Practice and Procedure Committee in 1977. Lord Carrington was a protagonist of the first view. He argued that the use of a committee system for legislation “could not conceivably work on a party political Bill—”.<sup>1</sup> This was because “most of us here when we see legislation of a controversial character want to change it, and I do not see how in a party political sense this [ie the use of a committee system for public bills] would work,—”.<sup>2</sup> The revision of legislation was “a weapon which any opposition can use. After all, it may be the only weapon the opposition has—to arrange matters in such a way that it can get some of its own way in the second chamber. I think it would be a mistake to frustrate the second chamber in trying to remove the party political side of it”.<sup>3</sup>

4. At the time at which these comments were made, Lord Carrington was seeking to reform the composition of the House. He sought an elected second chamber so as to give it more democratic legitimacy. However, the Conservative Government which took office in 1979 has been unwilling to reform the composition of the House of Lords. This memorandum is based upon the premiss that the composition of the Lords remains unchanged. Were the composition of the Lords to be altered, however, then of course different considerations would arise.

<sup>1</sup> First Report from the Select Committee of the House of Lords on Practice and Procedure. HL 141, 1977. Q 105.

<sup>2</sup> Q 107.

<sup>3</sup> Q 108.



5. With its present composition, it is doubtful if the House of Lords can be used, as Lord Carrington suggests, as a weapon of the Opposition. During the period of Labour Government from 1974–79, for much of which the Government was in a minority in the Commons, the Lords did succeed in securing important amendments to the Trade Union and Labour Relations (Amendment) Bill, and the Aircraft and Shipbuilding Industries Bill, but the bulk of the Government's legislation reached the statute book unscathed. Part of the reason for this was that the Conservative Front Bench in the Lords hesitated to insist on amendments rejected by the Commons, for fear of turning the debate away from the merits of the issue, and raising the cry of "peers versus the people". Arguably, the House of Lords has been more successful under the Conservative Government since 1979 in that the Government has been more willing to accept defeat, at least in part; but it cannot seriously be argued that the Lords has substantively altered the Government's legislative programme; nor that the power to amend legislation in the Lords has been a powerful weapon of the Opposition. Indeed, one authority has argued that, where the House of Lords is successful in pressing its amendments, this derives from its not being too party political.

"Paradoxically the value of the House of Lords in the legislative process appears to lie precisely in its complementarity to the Commons, based as this is on the former's non-elected (and undemocratic) character. It is the less party political character of the House which is the single most important fact differentiating its legislative role."<sup>1</sup>

6. Further, it may be suggested that the respect in which the House of Lords is held, and which has, surely, increased since the House has been televised, derives from its being seen by the general public, not as a party political chamber, but as a chamber in which issues can be approached more dispassionately and free from the pressures of the hustings.

7. Finally, it is noticeable that the areas in which the House of Lords has been most successful are those in which it has not sought to challenge the House of Commons, but to undertake work which complements the Commons: obvious examples are the European Communities Committee and the Science and Technology Committee. This suggests that any strengthening of the committee work of the House should follow the same principle of seeking to complement the Commons rather than compete with it. The point has been well put by Lord Windlesham, a former Leader of the House of Lords.

"The House of Lords should not attempt to rival the Commons. Whenever it has done so in the past it has failed, and usually made itself look ridiculous in the process.—In any well-tuned parliamentary system there is a need and a place for a third element besides efficient government and the operation of representative democracy. This third element is the bringing to bear of informed or expert public opinion—It is now one of the principal roles of the Lords to provide a forum in which informed public opinion can take shape and be made known."

"In assessing the influence of the House of Lords it is worth distinguishing the influence that comes from the ability to delay legislation from the influence that comes from special knowledge or the representation of interests".<sup>2</sup>

If this view is accepted, it can be seen that the composition of the House of Lords—a mixture of hereditary succession and appointment—is well suited to the exertion of influence deriving "from special knowledge or the representation of interests"; while, on the other hand, the ability to delay would require the Lords to possess more democratic legitimacy than it at present enjoys.

8. How, then, might the House of Lords best exert its influence? The first issue to be considered is how the Lords might bring its experience to bear on legislation.

9. Insofar as domestic legislation is concerned, the procedures of the House of Lords still reflect those of a chamber exercising nearly equal legislative power to that of the House of Commons, a position which the Lords has not held since 1911. These procedures seem more appropriate to a chamber whose main function is that of legislative revision rather than that of bringing expertise to bear. There is a striking contrast between the approach to domestic legislation where bills are considered on the floor of the House at four different stages—second reading, committee stage, report and third reading—and the approach to Community legislation where the House of Lords acts as, in effect, a pre-legislative committee.

10. It would be natural to adapt some of the principles behind the procedures of the European Communities Committee to domestic legislation by allowing the House of Lords to establish special standing committees on bills when it chooses to do so. The approach of a special standing committee should parallel, as far as possible, the approach of the European Communities Committee to Community legislation. It should have a pre-legislative role, with power to discuss Green and White Papers, and take evidence upon them. It should also have the power to hear oral evidence—normally in public—as well as written evidence, during the passage of a bill. This would allow the expertise of the Lords to be brought to bear through investigatory and forensic procedures, so complementing the more party oriented approach of the Commons; and it would ensure that debates on the floor of the House would be better informed.

<sup>1</sup> Donald Shell: *The House of Lords*: Philip Allan 1988. P 150.

<sup>2</sup> Lord Windlesham: *Politics in Practice*: Jonathan Cape 1975. Pp 142, 137.

11. Such special standing committees would be able to operate most effectively if they were able to consider a bill and take evidence upon it from the time the bill was introduced into the House of Commons, with the restriction that civil servants should not be expected to give evidence until the bill had left the Commons. By the time the bill reached the Lords, the special standing committee would be in a strong position to know which parts of the bill had not received sufficient attention in the Commons, and where the attention of the House of Lords could most usefully be directed. This would improve the effectiveness of the committee stage in the Lords which would now be taken by the special standing committee, rather than on the floor of the House. At this stage, ministers would be added to the committee if not already members.

12. When this proposal was being discussed by the Select Committee of the House of Lords on Practice and Procedure in 1977, the objection was raised by Lord Carrington and by others, that a procedure of the type outlined above would tend to underplay the party political aspects of legislation. More specifically, a problem of party balance would arise. With a Labour or Liberal Democrat Government, the composition of a special standing committee could not reflect the party balance of the House as a whole if the Government was to have a majority on the committee. Even when there is a Conservative Government, moreover, there is no guarantee that the party balance of the Lords will precisely reflect that of the Commons.

13. The weight given to this objection will depend upon the extent to which one believes that the prime function of the Lords lies in the revision of legislation. But, in any case, it is possible to meet the objection in two ways. First, party political considerations can still legitimately be brought to bear at the report and third reading stages of a bill. Second, the Lords can decide, if it so wishes, with regard to a particular bill, to take the committee stage of a bill on the floor of the House, as it does today, rather than in special standing committee. Hopefully, however, such occasions would be few and far between.

14. In addition to legislative scrutiny, however, the House of Lords has an important role to play in the shaping of public opinion. There is a considerable need for an institution which can bring to bear informed expertise upon major policy issues over a longer time-horizon than Government or Opposition are usually able to concern themselves with. The need for such an institution is particularly great in this country because of the comparative paucity of non-partisan think tanks, the virtual abolition of the Royal Commission as an instrument of inquiry, and the abolition of the Central Policy Review Staff (the "Think Tank") in 1983. The House of Lords is particularly well equipped to undertake thinking about policy which falls beyond the usual time-horizon of party politicians, but which is, nevertheless, essential for every advanced industrial society. It should, as Lord Fulton argued in 1977 discuss issues "which go beyond the mandates of any one government—".<sup>1</sup>

15. The European Communities Select Committee and the Science and Technology Select Committee form prime examples of how the House of Lords can exercise this function. Each of these Committees requires considerable expertise and mastery of technical detail; and, although each deals with matters of considerable importance to the long-term future of the country, there is no immediate pay-off in electoral terms. It has been claimed that the Science and Technology Committee "may be said to support the non-party political voice of the scientific community and its procedures ensure that the Government is reminded of what that voice is saying".<sup>2</sup>

In addition, the *ad hoc* Select Committees have also undertaken much valuable work, and their reports form essential sources of reference for students of the subjects with which they deal.

16. One weakness with the Select Committee system of the House of Lords, however, is that it seems the result of no coherent plan or strategy. There is no set mechanism for setting up the *ad hoc* Select Committees, which require the approval of the Leader of the House of Lords, and therefore the agreement, or at least acquiescence, of the Cabinet. If the Cabinet minister most concerned with the subject matter of a proposed Select Committee objects to its establishment, his or her objection is likely to prove conclusive.

Nor would the establishment of a Liaison Committee, as proposed by the Clerk of the Parliaments, necessarily remedy the situation. The political realities being what they are, it is unlikely that a Cabinet, whatever its political colour, would be prepared to allow a Select Committee to be established which could damage the credibility of the government.

It must, moreover, be recognised that two of the *ad hoc* Select Committees—that on Unemployment (1982) and that on Overseas Trade (1985), resulted in conclusions highly unpalatable to the Government. A Government will generally feel that it has little, politically, to gain from the establishment of a Select Committee. Such a Committee, by its very nature, is highly unlikely to conclude its deliberations by endorsing the status quo. Every Committee worth its salt must make some recommendations—and these may well be critical of government policy.

<sup>1</sup> HL 141. Q 123.

<sup>2</sup> M A J Wheeler-Booth: *The House of Lords*; in J A G Griffith, Michael Ryle and M A J Wheeler-Booth: *Parliament: Functions, Practice and Procedures*: Sweet and Maxwell 1989. P 494.



17. This objection can to some extent be circumvented by the establishment of new permanent sessional Select Committees. This would save the Leader of the House of Lords from the political embarrassment of having to acquiesce in or veto the establishment of a particular Committee; and the Government, when it is criticised, can at least take some comfort from the fact that the Committee may well be equally critical of a successor Government of a different political colour!

18. The Lords, however, for reasons given above, should not seek to compete with the Commons by establishing departmentally related Select Committees. Instead, it should seek to complement the Commons by establishing Select Committees where there are gaps in the scrutiny system of the House of Commons. These are most likely to occur where a particular subject matter cuts across departmental boundaries as is the case, of course, with the Science and Technology Select Committee. Indeed, according to one authority, "One reason for the choice of subject matter was that, with no department devoted uniquely to Science and Technology, duplication with the departmental select committees of the Commons could be avoided". Moreover, the *ad hoc* committees "frequently deal with matters which escape the Commons departmental committees by crossing departmental boundaries".<sup>1</sup>

19. There are two areas where, it is suggested, new permanent Select Committees might be established—central/local relations and justice. These two new Select Committees both fall within an area which might be called constitutional. It is frequently suggested that the House of Lords, being free from electoral pressures, bears a particular responsibility as a guardian of the constitution, since the Commons is often unable to take into account the full constitutional implications of the legislation which it passes.

20. This is, perhaps, particularly true in the field of central/local relations. Speaking in the House of Lords on 31 January 1990, Lord Rippon, a former Secretary of State for the Environment, declared that over the past 10 years, there had been 50 Acts on local government, including on average one a year on the finance of local government.<sup>2</sup> Over a year later, on 27 February 1991, Lord Armstrong, speaking with the authority of a former Cabinet Secretary, called for a review by a Royal Commission of "the whole state of local government and the relationship between central and local government in this country in all its aspects and in a single comprehensive survey, so that not only every aspect comes under scrutiny but also the various ways in which each aspect interacts with the others—".<sup>3</sup>

It is, however, unlikely that either the present Government, or any plausible alternative Government will actually establish such a Royal Commission. But a permanent Select Committee of the House of Lords could perform much the same function of reviewing the state of central/local relations and the constitutional implications of legislative proposals on the balance between centre and locality.

21. The relationship between central and local government is a subject particularly suited to the House of Lords. There is a no Select Committee on this subject in the House of Commons; and if one were to be established in the Commons, many in local government might fear that it would prove a vehicle for detailed intervention by MPs into their affairs. Such fears would not exist *vis-a-vis* a Select Committee in the House of Lords.

The editor of *The Times*, Simon Jenkins, has called for the establishment of a local government Bruges Group, ie a voice to be heard to defend the interest of local government. While a Select Committee of the House of Lords would be a voice neither of local nor of central, it would enable the interest of local government to be given more effective expression in Parliament, primarily through the large number of peers who have experience of local government and are sympathetic to its viewpoint.

22. The second permanent Select Committee would be one on Justice. It would have as its remit a duty to cover those areas which in some Commonwealth countries are the responsibility of a Minister of Justice, combining functions exercised in England and Wales by the Lord Chancellor, the Attorney-General and the Home Secretary. These functions would include keeping the statute book under review, scrutinising the administration of justice, and the procedures of courts and tribunals, and ensuring the preservation of judicial independence; scrutinising delegated legislation so helping to strengthen parliamentary control over this form of legislation; and, above all, monitoring the state of civil liberties, with particular emphasis on the compliance of legislation with the European Convention of Human Rights. The Select Committee would complement the work of the Law Commissions by examining their reports—analogously perhaps to the manner in which the House of Commons Select Committee on the Parliamentary Commissioner examines the work of that official—and stimulating political interest in proposals for law reform. The establishment of such a Select Committee is of particular importance for a country such as Britain where responsibility for the state of the law and for civil liberties is divided amongst separate government departments, and where there is no codified constitution nor Bill of Rights nor constitutional court to act as a guardian of civil liberties. Moreover, the weight of judicial expertise which the House of Lords contains makes a Select Committee on Justice a particularly appropriate one for the upper house.

<sup>1</sup> Wheeler-Booth, *op cit* Pp 493, 496.

<sup>2</sup> Col 387.

<sup>3</sup> Col 1012.

23. In the course of time, if these two Select Committees proved successful, further permanent Select Committees might be established, following the same principles, viz complementing rather than competing with the work of the departmentally related committees of the House of Commons, and using the resources of expertise which the House of Lords contains.

24. It is submitted that these two reforms—the establishment of special standing committees to deal with legislation, and the establishment of two new permanent Select Committees on central/local relations and on justice, would do much to strengthen the work of the House of Lords, employing more effectively the expertise which it contains, and allowing it to fulfil a function complementary to, but not competitive with, the elected House.

*July 1991*

#### **Memorandum by the British Bankers' Association**

The British Bankers' Association is the trade association representing the interests of 330 United Kingdom banks and overseas banks which have a presence in the United Kingdom.

We should like to comment only on the consideration of European Community matters, where the BBA's major objective is to ensure that the concerns of the banks are not overlooked by those negotiating and agreeing EC legislation in Brussels, particularly in cases where qualified majority voting applies. Much financial services legislation is highly technical, and is often negotiated in secrecy by the regulators without the regulated being present.

This contrasts, of course, with the openness of debates on legislation within Westminster and we are concerned that every effort should be made to ensure that EC legislation—which is often substantially revised in the Council—is properly scrutinised. There are already cases, unfortunately, where badly drafted aspects of EC legislation, which were not discussed with those to be affected, are giving rise to implementation difficulties. Enhanced scrutiny by the European Parliament might be helpful in this regard but, to the extent that many of the difficulties stem from the way in which directives require changes to national legislation, we consider that the sort of scrutiny that is required would best be achieved at Westminster.

It appears to us that scrutiny needs to be applied both at the initial stage, when the Commission brings forward new proposals, and during the course of Council discussions when significant amendments to the Commission's proposals begin to emerge. As far as the first stage is concerned, we have the highest regard for the existing work of the European Communities Committee.

The quality of the Committee's reports bears witness to the incisiveness of their Lordships' investigations and the expertise with which the reports are prepared. In our experience, not only are the reports influential within both the United Kingdom and the Community, but the evidence provided publicly by Ministers, senior Whitehall officials and representatives of the European Commission offers an invaluable early insight into the underlying policies in Commission proposals. Investigation by the Committee into such proposals significantly enhances the quality of public debate and consultation. For this reason we should like to see time found for the Committee's reports to be discussed on the floor of the House.

Once Council discussions are in train, however, our perception is that fundamental changes can be made to EC legislation with inadequate Parliamentary involvement. We appreciate, of course, that changes in Parliamentary procedures are being implemented, and it may be that these will meet many of our concerns, in particular, the need to ensure that those most affected by legislation have the opportunity to raise their concerns before the Government position has been finalised and that Parliament has adequate opportunities to discuss significant changes.

Nonetheless, we should like to propose two procedural changes which we consider would improve the level of public accountability during the later stages of the passage of Community legislation. First, we should like to see the European Communities Committee systematically review the development of key directives by calling back witnesses to give further evidence. It is, perhaps, at this stage that discussion on the floor of the House would be most valuable.

Second, we feel that the scrutiny of European legislation would be enhanced if the obligation of Government departments to make available revised directives and regulations was strengthened. The need for this was illustrated as recently as 3 July during the evidence given to the Treasury and Civil Service Select



Committee on the inter-governmental conference on economic and monetary union by Mr Francis Maude MP, Financial Secretary to the Treasury. The Committee's questioning was hampered initially, we understand, by the fact that the version of the Treaty amendments and the draft statutes of a European Central Bank available from the House of Commons library were out of date: the Committee were initially working from the December 1990 version whereas the Minister and his officials were working from a version produced on 17 June.

We would therefore recommend that departments be required to provide Parliament with the latest versions of all texts under negotiation, and that these should be publicly available from the relevant Government departments on request. It would also be beneficial if a list of these documents could be published as an appendix to the regular reports of the Commons' Select Committee on European Legislation.

*July 1991*

### **Letter from the Secretary-General of the Commission of the European Communities**

#### **THE COMMISSION AND THE SELECT COMMITTEE ON THE EUROPEAN COMMUNITY**

The Commission has always received and read with interest the reports of the House of Lords' Select Committee on the European Communities. Reports are received in the first instance by the Secrétariat General and, where appropriate, passed on to the specialised services and Directorates-General concerned.

As Mr Pownall points out in his letter, the Select Committee's reports have naturally tended to be reactive rather than anticipatory, and primarily addressed to United Kingdom Ministers. Nevertheless, the Commission has always valued the reports for their detailed analyses which have frequently served as important and broad sources of information on United Kingdom reactions concerning Commission proposals. Moreover, the Commission has always been ready to help the Committee in its work, both by giving evidence, and by receiving "fact-finding" missions in Brussels, and has found these contacts and exchanges of information, whether in London or in Brussels, to be of value.

The valuable and distinctive role of the House of Lords Select Committee would seem to be in its now well established role as a platform or a forum for informed discussion of Community policy initiatives, enabling both a parliamentary expert and interest group input. In that regard, the House of Lords seems to fill a distinctive function different from that of supervision of government policy, which is at least in large measure the function of European Committees in other Parliaments.

It is our experience that this function is valuable and it is here that the House of Lords can make its best contribution. It should consider ways of speeding up its examination of proposals, so as to intervene at as early a stage in the debate as possible. It seems to the Commission that the ongoing co-operation between European Affairs Committees under the aegis of the twice yearly Conference of European Affairs Committees offers an appropriate vehicle for exchanges of information and views, without usurping the role of the European Parliament. In our view those contacts can greatly assist national parliamentary committees and improve their work and accordingly should be intensified.

D F Williamson  
11 September 1991

### **Memorandum by the Confederation of British Industry**

The CBI welcomes the opportunity to comment on the review of the work of the House of Lords' committees.

The CBI represents firms across the broad spectrum of business—about 250,000 in all—and its purpose is to promote their international competitiveness. The scope of the House of Lords' European Communities Committee and of the Select Committee on Science and Technology, together with their sub-committees, is therefore very relevant to the wide remit of the CBI.

In making the following assessment, CBI policy staff have quoted half-a-dozen specific occasions and drawn on more cases for general impressions. These include both written and oral.

#### THE PROCEDURES AND EFFECTIVENESS OF THE COMMITTEES/SUB-COMMITTEES

The comments of staff involved in committee inquiries are unanimous in their respect for the quality of the committees' work and administration. The questioning is incisive, with Committee members well-informed and attentive. The submission of written evidence as a prelude to oral evidence is seen to be worth while.

CBI teams for oral evidence are selected on the basis of the perceived scope of questions forwarded beforehand. This is a valuable practice but Committee members often go outside this scope and, given the wide representative nature of the CBI, the team is not always able to give quite the definitive answers on policies that the Committees may require.

The more informal nature of contacts, such as subsequent correspondence and the attendance of Committee members or clerks at CBI Committee meetings of relevance, are therefore useful developments.

#### THE STRUCTURE OF HOUSE OF LORDS COMMITTEES

The structure appears well balanced from the business point of view. It is noted particularly that Sub-committee F avoids wasteful duplication with the House of Commons Select Committee on the Environment. The CBI has no suggestions of other subjects that should be covered, except in the context of the changing European scene (dealt with in the last section of this submission).

#### THE INFLUENCE OF HOUSE OF LORDS COMMITTEES

Because of the calibre, status and expertise of their members and the good procedural and administrative working methods, the reports issued by committees and sub-committees are widely held in high regard. They are usually well publicised and the CBI has been pleased by reports of its own evidence, which have served to help spread some messages important to British business.

As well as being given good media coverage, the Lords' reports (especially of the European Communities Committees) are often quoted by the European Commission, who regularly send officials to be examined—itsself a mark of respect. In the United Kingdom, the debates following reports are again well worth while. However, it has to be said that the Government's reaction to the work of their Lordships' Committees is not always as attentive as the CBI would hope, eg the recent lack-lustre response to the report on Innovation in Manufacturing.

#### FUTURE DEVELOPMENTS OF HOUSE OF LORDS' EUROPEAN SCRUTINY

The increase in European Community legislative "traffic" is already placing considerable strain on the process of scrutiny at Westminster. Changes in the balance of power in the Community institutions will affect this further. The revision of the Treaty of Rome is likely to widen the competence of the EC and that may require a reorganisation of the European Communities Committee and its sub-committee structure:

- It is likely, for instance, that the work on Social Affairs will be such as to merit a sub-committee to itself.
- Developments in the energy/transport and transport infrastructure fields bring them ever closer to environmental considerations and they are therefore probably more relevant to Sub-committee F.
- From the business point of view at least, technology subjects could well be fitted into Sub-committee A but they should not be overlooked by the present Sub-committees B, D and F to which they also have great relevance.
- External Relations and Consumer Affairs may well each justify separate sub-committees.

Another fundamental influence on the future work of committees at Westminster will be the future structure of European institutions, particularly the balance of initiative between the Commission and the European Parliament. A current draft text amending the Treaty of Rome provides that the Parliament may prompt the Commission to take an initiative. This may well require earlier, and possibly faster, attention to European legislative ideas.

It is not for businessmen to preach to politicians how they should run their internal affairs. The CBI would however want to continue playing a full and useful part in the proceedings of European scrutiny in the House. If current suggestions of a wide-ranging European Community law proceed, some special attention will need to be given to resulting secondary law.



With such future structures still in the balance, it is difficult to predict what effect they will have on structures at Westminster, let alone in the House of Lords European Communities Committee. However, two things are certain:

1. The volume of work coming from the Community will continue to increase and will need to be scrutinised quickly.
2. Particularly on technical subjects, there will be a need for updating on new developments.
3. It is worth considering whether House of Lords Committees could usefully scrutinise impending European legislation at more than one stage.

*July 1991*

#### **Letter from the Secretary-General of the Council of the European Communities**

In reply to your letter of 25 July on the work of the Lords' European Communities Committee I have the following comments:

The reports of the Committee are certainly well known to the Council Secretariat. In several cases the reports have been an important source of understanding of particular problems arising out of Community legislation under preparation.

Generally it is my view that the importance of scrutiny by national parliaments is likely to increase with the growing transfer of competence to the Community. The various ideas submitted during the ongoing Intergovernmental Conference on Political Union on possible ways of co-operation between national parliaments and between these and the European Parliament touch upon a very real need for the most efficient use of existing resources since co-operation of this sort would undoubtedly contribute to reducing unreasonable duplication of work.

May I say finally that I would of course be delighted to meet the delegation of the Committee during its planned visit to Brussels.

Niels Ersbøll

*11 September 1991*

#### **Submission by Consumers in the European Community Group (CECG)**

##### **1. CECG AND THE COMMITTEE**

Consumers in the European Community Group is an umbrella body for 29 United Kingdom organisations concerned with the effect of EC policies and proposals on United Kingdom consumers.

Our response is therefore confined to comments on the work of the European Communities Committee which has been kind enough to invite CECG to give evidence on a number of EC policy areas. These include the Common Agricultural Policy, food, consumer protection, product safety, air transport competition and financial services and the Single Market, and individual draft directives in these and other areas.

##### **2. CURRENT ARRANGEMENTS**

It is too often a feature of EC policy-making at Community level that the lobbies which exert the greatest influence are those that have the most money to present their case, irrespective of its merits. The European Communities Committee's inquiries, by giving all interested parties an equal opportunity to put forward a view, provide a useful safeguard and counter-balance.

We therefore always much appreciate the opportunity to contribute to the Committee's inquiries, and hope that the Committee will wish to continue them. We are aware that policy-makers in Brussels as well as in the United Kingdom hold the reports of the Committee in high esteem and take very seriously their conclusions and recommendations.

We would also like to put on record our appreciation of the help and advice given by the Committee staff. We also find it most helpful, when giving oral evidence, to receive advance notice of the general areas which the Committee may wish to discuss.

### 3. DEBATES ON REPORTS

The House of Lords Bulletin gives the dates of debates on Committee reports. Nevertheless, if it is ever possible for us to have longer notice, it would assist us in providing briefing for those taking part.

### 4. FOLLOW-UP TO REPORTS

It is interesting to look back at previous reports of the Committee to see to what extent the recommendations have been implemented. We would like to suggest that consideration be given to holding very short review inquiries on these lines.

For example, the European Commission and the Department of Trade and Industry might be invited to comment on developments since the conclusions of the European Communities Committee 1986 Report on EC Consumer Protection Policy. Other organisations which also gave evidence at the time, such as CECG, could be invited to submit short memoranda in advance.

### 5. DEADLINES FOR EVIDENCE

CECG has a small staff, with only four and a half permanent posts, and a modest commissioned research budget. It occasionally happens therefore that CECG is unable to prepare a submission by the Committee's deadline, or that a submission is not as full as we would wish.

However, we do not suggest that the Committee should hold enquiries over a longer period, as we appreciate that there has to be a careful balance between the need to give all parties an opportunity to submit views and the need to produce a report in time to influence the decision-making process. The use of majority voting for Single Market measures since the Single European Act has of course speeded up the decision-making process and highlighted this dilemma further.

### 6. CHOICE OF TOPICS

With this in mind, CECG believes that the Committee can particularly contribute to the development of EC policy through general inquiries which examine areas where there are likely to be (or ought to be) EC proposals. The Committee can for example discuss with EC officials at an early stage the direction which their thinking may be taking, and make recommendations which may be taken into account before draft directives are formulated rather than subsequently.

Decisions on topics for consideration must of course be a matter for the House. CECG would however be happy to put forward suggestions for consideration, based on information available to us about anticipated Commission proposals in the coming year. Current subjects of particular interest to CECG include:

#### (a) *EC Food Policy*

An inquiry might consider whether consumers are better served in a Single Market by the establishment of "quality" marks and other food standards, or by improvements to food labelling to enable consumers to make more informed individual choices and, if the later, what form improved food labelling might take.

#### (b) *Consumer redress and access to justice*

An enquiry might examine existing and possible alternative methods of consumer redress and access to justice for cross-border purchases of defective goods and services after 1992.

As the Commissioner for Consumer Affairs, Karel Van Miert, said in October 1989: "The need for consumers to be able to protect themselves both within a Member State and also within the Community, by using the law for redress, is obvious. If they are prevented from doing this because of the high cost of action then the preventative character of laws such as Product Liability is lost. At present, the average consumer will not risk legal action because the costs involved are too high and the procedures complex and slow. There is a risk that some producers will take advantage of this situation to continue to operate without due care, in the knowledge that most of the customers will not seek redress".

Progress in this area has been particularly slow and mainly limited to pilot projects concerning small claims. While there are no legislative proposals at present, there are opportunities for progress through political co-operation between the Member States and under international conventions.

#### (c) *The consumer and other EC policies*

Another area of interest to CECG is the integration of consumer policy into the other common policies, so that the consumer interest can be taken into account in, for example, the Common Agricultural Policy and policies on food, trade, transport, competition and energy. An inquiry would cross departmental boundaries and help to establish an overall picture of the extent to which the Commission and Council of Ministers seek to recognise the interests of consumers in policy-making decisions.



Trade policy is of particular concern to consumer organisations. While the possible drift to a protectionist "Fortress Europe" would have the most serious consequences for consumers, the EC frequently neglects consumer interests in this area. Many key decisions on trade policy are taken in secret and without either consultation with consumer organisations or study of their impact on consumers.

(d) *EC consultative process*

A related topic is the EC consultative process, including the structure and role of Commission advisory and consultative committees and the extent to which their views are taken into account. An inquiry might draw comparisons with the processes of consultation in the Member States.

We hope that these brief comments will be of assistance to the Committee.

2 September 1991

**Memorandum by Mrs Eileen Denza, CMG, Second Counsel to the Chairman of Committees  
on a House of Lords Foreign Affairs Committee**

The House of Lords is the only chamber among the 20 which form the national Parliaments of the Member states of the European Community which has no Foreign Affairs Committee of any kind. The two chambers of the Parliament of Ireland, the Seanad and the Dail, have a joint committee whose remit is limited to co-operation with developing countries. (Irish scrutiny of European Community affairs is also carried out by a Joint Committee).

There exists in the House of Lords a large degree of interest and a substantial pool of expertise in foreign affairs. The extent of direct knowledge and experience of foreign affairs is greater than the knowledge and experience of European Community affairs was in the early years of operation of the European Communities Committee, although this is changing as the United Kingdom puts down deeper roots within the Community and new peers are created bringing experience of the Community institutions.

The House of Lords as a whole has however apparently had little influence on the conduct of foreign affairs. Chapter 5 of the recently published book *Parliament and International Relations* examines the role of the House of Lords in foreign affairs, and concludes that it "appears to be so peripheral as far as Government is concerned that at least in its deliberative role it can easily be forgotten about altogether". The limited influence of the Lords in foreign affairs is contrasted with their real influence and high reputation on European Community matters, exercised through the European Communities Committee. This study suggests that the problem may be that peers who had previously held positions of great importance in Government and society have become "—as they themselves are often the first to admit—out of touch". But this alone cannot explain the contrast with European Community affairs.

This contrast can much more readily be explained by the fact that a committee taking expert evidence, supported by qualified staff and producing a single collectively endorsed Opinion after examining Ministers or officials, is inherently more capable of carrying weight than is the House expressing in debate views which are inevitably diffuse and varying and naturally reluctant (as the House of Lords is) to challenge Ministerial statements without a sound and independent basis for such a challenge. The European Communities Committee did not begin seriously to influence or to change positions of the United Kingdom Government or of other Governments in the Council of Ministers until it moved away from its early reliance on collusive discussion with Government Ministers and officials to a reliance for the most part on independent and public evidence. Although a debate on a European Report can give the Report a higher profile and force the Minister to respond to recommendations, it is the Report and not the debate which continues to be studied in Brussels, in Strasbourg and in other capitals. There is no obvious reason why the development of the European Communities Committee could not be reproduced in the field of foreign affairs, provided that a sufficient number of peers having foreign affairs experience wished to form a Foreign Affairs Committee.

If the will existed to establish a House of Lords Foreign Affairs Committee, the question of its terms of reference would arise. It would be advisable not to circumscribe these. One of the strengths of the European Communities Committee has been its power to enquire into "any other matter", even though the formal framework for the Committee's work has for the most part centred on the scrutiny of proposals for Community legislation. In selecting subjects for full enquiry it would always be relevant whether sufficient material evidence would be publicly available and whether it could be expected that public opinion would play a major part in decisions by Ministers. The matters suggested by Lord Kennet in 1977 are interesting candidates (paragraphs 11–14 of the 2nd Report from the Select Committee of the House of Lords on Practice and Procedure are attached at A). (iv)—Government action and policies in international organisations—would be particularly useful now that an increasing proportion of the conduct of international affairs takes place within the framework of international organisations.

One matter which could with advantage be taken into the terms of reference of any Foreign Affairs Committee is the supervision of United Kingdom participation in important treaties. The role of Parliament in the United Kingdom in regard to the Conclusion of Treaties is described in Appendix 4 to the Select Committee on the European Communities' most recent Report on Political Union: Law-making Powers and Procedures<sup>1</sup>. Chapter 3 of the book *Parliament and International Relations* deals with Parliament and Treaties and shows that—despite the original intention of Lord Ponsonby and the subsequent practice developed within the framework of the Ponsonby rule—the influence of Parliament over treaties is marginal. Parliament exercises control over treaties only where they require changes in the domestic law of the United Kingdom. This can produce anomalous results. For example, on 1 July 1992 the House Magazine commented on the fact that when the United Kingdom becomes a party to major arms control agreements, the only aspect examined by both Houses of Parliament is the privileges and immunities to be extended to inspectors. The treaties themselves have of course been laid down before Parliament and there is nothing to stop the setting down of a motion to debate their ratification. But in practice the opportunities afforded by the Ponsonby rule can only be taken effective advantage of by Parliament—given the large numbers of treaties signed in any year by the United Kingdom and the press of other business—if there is some sifting body to draw to the attention of the House the ones which should properly be examined and debated. The random nature of Parliamentary interest in treaties is in sharp contrast to the position in most other countries—particularly the United States where the power of the Senate to advise and consent to the ratification of treaties by the United States is of great constitutional significance. The possibility of more effective Parliamentary scrutiny of treaties by a specialist Committee or Sub-committee is discussed at pp 46–48 of the book *Parliament and International Relations*.

Another obvious candidate for more systematic scrutiny would be European Political Co-operation or—as it may be known following the entry into force of a Treaty on the Union—the Common Foreign and Security Policy. There is at present no systematic scrutiny by the House of Lords of European Political Co-operation. Only in the context of last year's enquiry into Economic and Monetary Union and Political Union has its operation been generally examined by the European Communities Committee. Any re-examination of scrutiny following the adoption of a new Treaty on the Union would require a decision on whether the present remit of the European Communities Committee should be extended or whether scrutiny of foreign policy matters could more effectively be carried out by a Foreign Affairs Committee.

Any possible establishment of a House of Lords Foreign Affairs Committee would of course raise the question of whether there is a case for the setting up of a Joint Committee with the House of Commons or, if this is rejected, how to ensure that there is no duplication of function with the House of Commons FAC. Duplication in the case of European Community matters has not been a serious problem—though as the House of Commons begin to take evidence more frequently we now have to pay more attention to avoiding overlap. I believe that there are enough topics to keep Committees of each House constructively occupied without overlap being a major difficulty.

If Lord Jellicoe agrees, it might be possible to bring these points, and any other which he may wish to add, to the attention of those who in 1977 proposed a Foreign Affairs Committee. The expertise is undoubtedly there and the next step should be to ascertain whether the zeal is there too.

9 October 1991

#### Extract from 2nd Report from the Practice and Procedure Committee 1977 (HL 256)

#### Annex A

##### *A Foreign Affairs Committee of the House of Lords*

11. The Committee have considered a proposal, submitted by Lord Avebury, Lord Bethell, Lord Greenhill of Harrow, Lord Kennet, and Lord Weidenfeld, that a sessional Select Committee should be set up to review aspects of United Kingdom foreign policy and report on them to the House. Lord Kennet gave oral evidence to the Committee on behalf of the five peers submitting the proposal.

12. The proposal put to the Committee was that the sessional Select Committee would decide which topics it would look at. Lord Kennet, in giving evidence to the Committee, suggested five possible classes of matters which might be investigated:

- (i) matters which, while important for the future of the country, are not reported in the Press;
- (ii) matters which, in Lord Kennet's words "tend to go asleep and then jump up and hurt us unexpectedly";
- (iii) matters on which public opinion is likely to have a strong effect, and to which it may therefore be desirable to call attention earlier rather than later;
- (iv) Government action and policies in international organisations; and
- (v) the structure and function of the Foreign Service.

<sup>1</sup> 17th Report 1990–91, HL 80.



13. It is the contention of the peers submitting this proposal that there is in the House of Lords a group of peers who are very highly qualified to discuss foreign affairs in the public interest, but who at present have few opportunities to do so. The establishment of a Foreign Affairs Committee would enable this group of peers to be better informed, and would therefore improve foreign affairs debates as well as perhaps leading to an increase in the number of such debates. Membership of such a committee might also enable more members to become knowledgeable about foreign affairs.

14. The Committee are attracted by the proposal, which would in their opinion enable the House to play a more useful role in the field of foreign affairs. The Committee recognise that there are areas into which it would be undesirable for such a committee to venture. But they do not consider this a serious danger, since the committee would be able to do little without the co-operation of the Government, and their co-operation would clearly not be forthcoming if the Committee were to investigate such areas. The Committee note that there stands on the Order Paper of the House of Commons an Early Day Motion urging the setting up of a foreign affairs committee in that House. It has so far attracted all-party support from 385 Members of Parliament and will, presumably, be considered by the Commons Select Committee on Procedure which has yet to report. While the Committee are, in principle, in favour of the setting up of a foreign affairs committee in this House, they are of the opinion that it would be wise to defer any decision until the Commons Select Committee has reported, having regard to the possibility of the setting up of a Joint Select Committee on Foreign Affairs.

### **Memorandum by Mr Andrew Duff**

#### **INTRODUCTION**

My memorandum will bear mainly on the work of the European Communities Committee with its six Sub-committees. With regard to the Select Committee's wider brief, I would say that were the House of Lords able to apply similar scrutiny procedures (including the taking of evidence) in relation to all United Kingdom Government business as it does to EC affairs and to science and technology, Parliament as a whole would benefit. It may be, however, that such an extension of the role of the House of Lords would be unacceptable were the British political system to remain otherwise unreformed.

For your Committee should be in no doubt that the work of the EC Committee since 1974, along with that of the Select Committee on Science and Technology since 1980, has provided the House of Lords with a major justification for its continued existence. One may safely conclude, indeed, that any reformed House of Lords would be wise to build upon the experience of these two select committees. It is particularly important, therefore, that the recent role of the Lords in EC affairs and in science and technology is not misunderstood, and that that role continues to adapt to changing political and constitutional circumstances. For these reasons the present enquiry into the committee work of the House is most welcome.

#### **EUROPEAN COMMUNITY GOVERNMENT**

Since United Kingdom accession, the political and institutional profile of the European Community has become much more distinct. It is now undeniable that EC membership involves a very considerable pooling of national sovereignty in the two principal supranational institutions, the Court of Justice and the Council of Ministers. The Commission has important executive and legislative powers. The European Parliament (EP) has limited legislative responsibilities in some policy sectors yet growing popular legitimacy. Most EC law, however, is made in secret by the Council.

European integration has not been confined to the EC. First attempts at forming a common foreign and security policy have been made largely outside the EC's legal and representative system, in European Political Co-operation, where the Commission is restricted to a marginal role and the Court and the EP play no serious part whatsoever. Likewise with internal security matters, where intensive diplomatic activity has only taken place between the 12 EC member governments outside the EC framework.

Nevertheless, whether within or without the EC, European unification continues to gather pace. The motivation behind the current Intergovernmental Conferences (IGCs) on Economic and Monetary and Political Union includes the need to manage the new single market, to reinforce monetary integration, to prepare for the further enlargement of the Community and to respond to other international pressures. The conclusions of the IGCs will involve of necessity a further strengthening of EC collective action and the central authorities at the expense of individual national governments and parliaments. It is safe to presume that the IGCs will allow the powers of the EP to continue to develop, but neither as fast nor as far as the accretion of power by the Council, in other words, the "democratic deficit" in Europe will grow. That external and internal security will remain outside the EC will also serve to build up intergovernmental, ministerial Europe and diminish federal, parliamentary Europe.

The fact is that we are already living within a federal European system that is not comprehensive, not working very well and not very democratic. Unfortunately, current trends, reinforced by the attitude of the British Government, will accentuate the problems. The powers of EC ministers are set to expand dramatically while there will be no concomitant development either of the representative capability of the EC institutions or of their democratic accountability.

These are the circumstances in which the House of Lords is re-examining its own role in the government of the Community and, more generally, that of national parliaments in the processes of European unification. The Select Committee is faced with the additional worry that the picture of the EC painted here is not one that is generally shared by United Kingdom parliamentary or public opinion. Indeed, there seems to be very little perception either that our own parliamentary democracy is weak or that the European Community is an integral part of it. Certainly, the recent reform of the EC scrutiny procedure in the Commons was not driven by such anxieties, and has done nothing to allay them.

#### EUROPEAN COMMUNITY LEGISLATION

If the European Community is heading for a major constitutional crisis, the House of Lords EC Committee has a duty to alert the United Kingdom Parliament and public. The United Kingdom Government continues to be preoccupied with its presumed loss of sovereignty—while failing to recall how much more powerful is the EC collectively to any of its constituent member states acting alone. In my view, in the European Community it is civil rights not state rights that need reinforcement, and the House of Lords has a major contribution to make to plugging the democratic deficit.

First and foremost that means supporting the European Parliament in its struggle for power. Already, several areas of Government policy, such as agriculture and trade, have passed from the national to the EC dimension without any parallel shift of parliamentary control from Westminster to Brussels/Strasbourg. Westminster should not fear that the European Parliament has grown unduly at its own expense: it is the rapid assumption of EC government by the Council that has jeopardised our parliamentary system, not the gradual emergence of the European Parliament. Furthermore, many of the new powers sought by MEPs—for example, control of revenue expenditure or the right to amend, block and approve all legislation—have seldom if ever been exercised by British MPs. It should be a feature of the new federal democracy that the EC executive never comes to wield the same dominance over the European Parliament as the United Kingdom Government has over the House of Commons.

Although the EP is yet far from having achieved comprehensive rights of co-decision with the Council, in those areas—mostly concerning the single market—where the EP is already a true partner in the law-making of the Community, national parliaments should not seek to interfere. Where the EP can amend or block EC legislation, it should be allowed, indeed encouraged to do so. However diverting national parliaments may find it to scrutinise the minutiae of draft EC laws, they will do so neither so efficiently nor so effectively as the European Parliament. The vain efforts over the years of the Commons to influence the passage of EC legislation is a case in point.

Where national parliaments can make themselves most useful during this critical transition phase of European unification, is in working on those EC policy areas where the EP has no effective power. One obvious example is the Common Agriculture Policy, where the EP is prevented by the Council from exercising full budgetary authority. Another is the non-EC Schengen Agreement, where the EP is rigorously excluded from exercising scrutiny of important joint action between a number of EC member governments. Another is the work of the IGCs themselves, where the EP is kept informed (more or less graciously) of developments but has no formal part to play in influencing the passage of the Conferences or in expressing its assent or dissent to the outcome. Another related area of EC activity which evades parliamentary accountability is the work of the European Council of heads of state or government. These institutionalised summit meetings have appropriated such power that they resemble more the Congress of Vienna than the collective leadership of a modern parliamentary democracy.

In short, it is important for national parliaments to focus their attention more on the activities of their ministers and the national civil servants and less on the supposed delinquencies of the EC Commission. They should not compete with the European Parliament but complement it. They would be wise not to occupy themselves with EC draft legislation where that is properly the responsibility of MEPs, but rather with EC legislation and executive decisions where they are exclusively the responsibility of the Council and COREPER.

#### THE ROLE OF THE LORDS IN EUROPEAN UNION

Much of this will not surprise the House of Lords, whose record in EC affairs, certainly when compared to that of the Commons, is estimable. Lord Aldington's Sub-committee of 1990 on the IGCs, for instance, was a good example of how a national parliament could achieve a broad critical assessment of the current state of the Community and of its future development. That Report [27th Report, 1989–90 (HL 88–I and II)], with others from the EC Committee, has been admired in official and academic circles throughout the EC. The particular value of such exercises from the United Kingdom point of view is that neither Government nor Opposition is accustomed to thinking about the EC in strategic terms. The debate about European Union in the United Kingdom has been in danger of reducing to an exchange of epithets, or arguments about value for money, as a substitute for conceptual thought about long-term interests. The wider the Lords' Select Committees can trawl for submissions of evidence the less partisan and the less Brito-centric will its Reports



become. They will also be more informed: the Science and Technology Committee suffered for some time from an inability to understand EC rules on additionality and were not, in my view, sufficiently critical of the United Kingdom Government's abuse of the system of EC R&D funding.

The United Kingdom Government's implementation of EC law is, indeed, an important subject of enquiry by national parliaments. In this, the House of Lords could collaborate more both with the European Parliament and with other EC organisations such as the Court of Auditors—examining expert witnesses and producing where appropriate a distinctly non-governmental view.

With its advantage of comparative impartiality, the House of Lords has the capacity to be more innovative than the Commons. The EC Committee could maximise its influence by collaboration with similar committees of other national parliaments on controversial issues. Some co-ordination between national parliaments already exists, of course, but it should become more ambitious and systematic. For example a concerted alliance between national parliaments may be effective in insisting on improvements to the technical quality of EC laws. Or national parliaments together could mount a special campaign, such as the opening up the dossier on reform of the CAP. Here, the EP has almost no influence, and the Commission is obstructed too often by a Council composed of farm ministers with a spurious sense of national interest. In addition, the EC Committee might investigate that which is partly hidden from the EP—for example, the workings of the European Political Co-operation procedure. Co-ordinated transnational pressure on several members of the Council at once will always be more influential than an isolated lobby of one.

Inter-parliamentary collaboration would provide a new dimension of the EC work of the House of Lords. A formal networking of national parliamentary EC committees might grow naturally from such an experiment. Joint meetings might be held at least twice a year. The Commission and Council Presidency may usefully be summoned by this intra-Community parliamentary committee to report and be interrogated. Having formed a better idea of the timetable and programme of each Council presidency, national parliaments would be in a good position to hold to account the behaviour of their own national ministers in Council. Such inter-parliamentary collaboration would also help to avoid serious misunderstanding between national positions (as witnessed, for example, over the GATT talks). The House of Lords would find several like-minded *interlocuteurs*, although interaction would probably be easier if the Lords adopted the Continental practice of appointing rapporteurs of its select committees. The German and Belgian parliaments, in particular, have useful advisory committees which tend not to scrutinise draft EC legislation but to enlist general support for European integration. The Danish parliament similarly avoids the pretence that it can take part in EC law-making but attempts to control the performance of its ministers in Brussels.

The Rome Assizes provide an example of national parliamentary collaboration with the European Parliament. The experiment seems to have been useful, not least in helping to educate some United Kingdom MPs in EC politics. It may be that the EC Committee felt it appropriate to repeat the Assizes after the conclusion of the current IGCs. My own view, however, is that while occasional Assizes are valuable, any attempt to induce regular and formal meetings between the European and national parliaments will be frustrated. MEPs have their own mandate and their own agenda and (busy) schedules. While MEPs will probably be willing to assist the Lords with their deliberations from time to time, they will be inclined to fight shy from too close an association with national parliaments. In any case, the political party not the parliamentary committee is the more functional means of communication between national and EC parliamentarians.

The question of joint action between the Lords and the Commons should be addressed. There seems no reason why the two Houses should not combine their efforts on EC affairs—as they did, indeed, for the Assizes. Such a combination would certainly be more cost efficient. However, if the Lords feel that one of their roles is to plug gaps left by the deficiencies of Commons' procedure, or if the Commons prefers to be left alone, a separate arrangement is inescapable.

Both Houses, however, should be more alert than they have been to the constitutional implications of European Union. Both need to be generally better informed about mainstream EC politics so that they can make a realistic contribution to debates in those important areas, such as ratification of Treaty amendments or future enlargement, where national parliaments do retain legislative supremacy.

The Lords' EC Committee is surely in a strong position from which to assess the European integration process and to be alert to the question of subsidiarity in the developing Community. The case for constructing a parliamentary Europe has to be made systematically, and the House of Lords should use its prestige and expertise to do so. It would be a strange epitaph for the Westminster Parliament that it had allowed the British non-constitution to be supplanted by a comparable void at the European level.

Andrew Duff

Cambridge, 24 July 1991

**Note:** Andrew Duff is grateful for the support of the Joseph Rowntree Reform Trust Ltd.

### **Letter from Dr D R Langslow, Chief Executive of English Nature**

English Nature welcomes your invitation to submit written evidence to your Committee which is reviewing the role and work of the policy or “investigative” Committees of the House.

English Nature’s main purpose is to promote directly and through others the conservation of the wildlife and natural features of England within the wider setting of the United Kingdom and its international responsibilities. Our ability to achieve our objectives, and in particular the opportunities to work through others, is strongly affected by many policy areas. The role of the Select Committees of the House of Lords in reviewing policy work across a wide range of topics, particularly those influenced by legislation from the European Commission, provides us with valuable opportunities to demonstrate how policy in an area affects our interests. The Reports also provide useful reviews of the other concerns in a particular policy area.

We have reviewed the reports produced by the House of Lords’ Select Committee on the European Communities between April 1990 and March 1991. The Nature Conservancy Council contributed evidence to the 24th Report, Session 1989–90 (The Future of Rural Society) and indirectly via the Ministry of Agriculture, to the 7th Report, Session 1990–91 (Non-food uses of Agriculture Products). Over the last five years we have submitted evidence each year to one or two enquiries carried out by sub-committees of the Select Committee on the European Communities. We have also submitted evidence to enquiries conducted by the Select Committee on Science and Technology in the 1990–91 Session, in particular for the 6th Report on the Nature Conservancy Council. We have submitted evidence to one or two enquiries by this Committee each year.

English Nature finds the Committees are useful as a forum to gain “public” consideration of our views and to learn of others’ views on issues. This provides opportunities for us to follow-up matters with others in more detail. We also find the Reports of great value as reference sources for the topics covered.

The Reports are undoubtedly influential. This is a consequence of the working methods of the Committees. The use of specialist advisers, combined with the experience of Members who serve on Committees, helps give credibility to the evaluation of the evidence that is presented from a wide range of interested parties.

The range of topics covered by the Committees is very large. We hesitate to come up with specific proposals for topics which could become matters for enquiry. We suggest that periodic reviews of the implementation of legislation would be valuable, in particular the way in which environmental objectives are given recognition and accommodated in the administrative mechanisms in a way that affects the impact of policy. This review process will become more important as the commitment to sustainable development, the maintenance of biodiversity and the integration of environmental objectives into all policies begins to be reflected in policy and administrative mechanisms. This is true of both domestic and EC legislation and mechanisms for implementation. Are the opportunities recognised in a way that specifies the objectives and hence is subject to review?

In summary, English Nature welcomes the House of Lords Committee system as a valuable forum to present views and have them assessed in an impartial way by experienced people. We feel the Committees are influential and the Reports valuable. We would suggest the Committees review the implementation of legislation with particular emphasis on whether the opportunities presented for fulfilling the environmental objectives have been identified and realised.

27 June 1991

### **Letter from Sir John Fairclough**

I am writing following your letter inviting me to submit written evidence to Lord Jellicoe’s committee which is examining the committee work of the House. I regret that I have not had sufficient time to consider this matter thoroughly and comprehensively but there are a number of points that I should like to register about the work and role of the Science and Technology Committee.

You will know that I am very familiar with the work and activities of this Committee; I gave evidence on a number of occasions and had many informal dealings with the Committee and its members from my position as Chief Scientific Adviser in the Cabinet Office. The work of this Committee is highly regarded and has an important influence on policy. I hope that the purpose of the present enquiry will be to determine how their work might be improved and strengthened. Focused enquiry into science and technology policy, by a broadly based Committee, can bring a perspective that is not influenced by Departmental or scientific discipline boundaries. Indeed, I would judge that their contributions have had most influence when broad issues of policy, bridging sectorial interests, have been addressed. I would note particularly the report on civil R&D which Lord Sherfield chaired.



To enhance the scope and relevance of the Committee's work, I suggest there could be considerable merit in a review of the present selection process used to determine the issues to be examined. It is important to retain the absolute independence of the Committee but I feel that this selection mechanism could benefit from wider consultation both on the issue selection as well as the intended scope of the examination. It is my impression that these decisions are made by the Committee themselves with little consultation. Maybe the Committee could periodically invite suggestions from a clearly identified community and plan its programme on a rolling basis so that new issues, and the scope of the intended examination, are considered through a consultative process some time in advance of the work being started. I accept that some issues will need to be addressed at short notice because of the political pressures but the examination of broad strategic issues across sectoral interests could form the foundation of the Committee's work and these will not be subject to short term political pressures.

Another factor which needs to be considered is the relevance and timeliness of the investigations. There are many issues of the day, such as transportation, healthcare or environment where science and technology have an important contribution to make. It has often occurred to me that when one or other of the Houses are examining an issue of national importance, their deliberations tend to neglect the status and contribution that science and technology can provide. Often this is out of ignorance of the technical aspects of the issue. There could be merit in the Committee setting out to technically illuminate selected national issues, that have currency in either House, and where science and technology, if properly focused, could have an important role. Such an approach would assist with the development of the notion that science and technology is not something that stands alone but needs to be marshalled as an integral part of a national solution.

There is a danger that the Committee will develop a bias towards advocacy for the so called science base and neglect the broader role of science and technology. This would not be appropriate although that community does need all the support it can get. In my view the House of Lords Committee could be most helpful by articulating the relevance of the science base to future issues and so provide some broad guidance on priorities that address issues of national importance.

14 July 1991

**Memorandum by Professor John P Grant, Professor of International Law, University of Glasgow**

#### A HOUSE OF LORDS FOREIGN AFFAIRS COMMITTEE

I have had the benefit of reading the Second Report (1977) from the Select Committee of the House of Lords on Practice and Procedure, Appendix 4 to the Seventeenth Report of the European Communities Committee and the paper, dated 9 October 1991, from Mrs Eileen Denza, Second Counsel to the Chairman of Committees.

In my view, there is no doubt that a House of Lords Foreign Affairs Committee is not only desirable, but also necessary. Mrs Denza correctly alluded to the fact that the House of Lords is the only legislative chamber among the European Community states without such a committee. However, more serious than the absence of such a committee is the failure of the House to make its mark on foreign affairs. Donald Shell of Bristol University is not wrong when he concluded, in *Parliament and International Relations* (1991) p 91, that, with some notable exceptions, eg Hong Kong and Gibraltar, the role of the House of Lords in foreign affairs "appears to be so peripheral as far as Government is concerned that at least in its deliberative role it can easily be forgotten about altogether".

Given the depth of experience among Members of the House of Lords, this is a depressing conclusion. One does not need to be a constitutional purist to hold the view that in the conduct of foreign affairs, as in other areas of government, the Executive should be accountable. There may be no way that Government can be *controlled* in the conduct of foreign affairs. While the courts have taken some small steps to control the Executive in the exercise of prerogative powers (as in the *GCHQ Case*), it is difficult to imagine that courts would be willing to review prerogative powers insofar as they related to foreign affairs; that would run contrary to a long-standing judicial tradition.

If it is believed that it is important that Government should be accountable for what it does in foreign affairs, that throws a real burden on Parliament. The present range of international activities undertaken by the United Kingdom Government are so extensive that the House of Commons Foreign Affairs Committee, for all its good work, can only scratch the surface. There is no doubt that debates on foreign affairs in the Commons have been better informed since the creation of its Foreign Affairs Committee. Further, the existence of a Foreign Affairs Committee clearly allows a legislative chamber to investigate an issue in depth, reflect, and analyse and comment in a report which, even if not formally debated, can have an impact on Government attitudes and policies.

A House of Lords Foreign Affairs Committee would complement the work done in the Commons Committee and could, with a little imagination, carve out a niche for itself. The model must be the European Communities Committee whose work is held in the highest regard. Its influence on policy has been considerable. The depth of expertise in foreign affairs among Members of the House of Lords could lead to the creation of a Committee with influence, both in reacting to past events and in forming future policy.

Three areas might be mentioned where there has been insufficient Parliamentary time (or interest?) for studied investigation, reflection and informed comment. First, relations between the United Kingdom and international organisations and United Kingdom policies within such organisations have been subject to virtually no scrutiny. Has the Legislature explored the possibilities for international peace-keeping through the Security Council since the Gulf War? Has the Legislature considered the feasibility of a rapid deployment force, whether under the aegis of the Security Council or the WEU? Has the Legislature investigated in depth the United Kingdom withdrawal from UNESCO and its implications?

Secondly, as Mrs Denza points out, "the influence of Parliament over treaties is marginal". Only about one treaty in four is subject to the Ponsonby Rule, requiring treaties to be laid on the table of both Houses for 21 days prior to ratification. The rule itself requires no action by either House before ratification. It merely alerts members to an impending international obligation which Government intends to enter. Without suggesting that the United Kingdom follows the United States pattern of having treaties subjected to the consent of the Upper House, there ought to be a more systematic way of scrutinising treaties, particularly important treaties.

Thirdly, there is now no doubt that, before and since the Single European Act and in light of what might be contained in the Treaty on Political Union, much of our foreign policy will be undertaken in co-operation and co-ordination with our European Community partners. Has the Legislature explored what European Political Co-operation in foreign affairs will mean for the conduct of our foreign policy? Each member state, and its legislature, is in a position to influence the development of European Political Co-operation, but only after detailed and thoughtful analysis.

Much has been made of the risks of duplication were the House of Lords to establish a Foreign Affairs Committee—indeed, this seems to be the major argument against the setting up of such a committee. This argument lacks any real substance. The terms of reference of the House of Lords Committee could be drawn in such a way as to minimise the risk of duplication with the work of the House of Commons Committee. The House of Lords Committee would do well to follow the model of its European Communities Committee and restrict itself with issues in broad spectrum, with strategic rather than tactical issues. Even with carefully-crafted terms of reference there would remain the risk of some duplication. The remedy here was provided by Lord Dormand of Easington in the Select Committee on the Committee Work of the House on 15 October: "when a select committee considers its programme for the session . . . the chairmen of the two committees, one in each House, would simply get their heads together at the beginning of the session and ensure that there is no duplication of investigation".

The case for a House of Lords Committee on Foreign Affairs is overwhelming. The fact that all the legislative chambers of our European partners have a committee, and the House of Lords does not, is not of itself reason for a committee to be established in the House. But that fact requires us to ask what it is about legislative scrutiny of foreign affairs that has persuaded all our partners to follow one course of action and ourselves another. In a book published in 1980, *Parliamentary Control over Foreign Policy*, the limited potential for exercising control in the United Kingdom, and particularly through the House of Lords, in comparison with the potential available in the countries investigated (France, Germany, Italy, Denmark and the United States) makes stark and alarming reading. Without doubt, a House of Lords Committee on Foreign Affairs would contribute greatly—and positively—to the overall conduct of United Kingdom foreign affairs.

30 October 1991

**Letter from Mr Nigel Haigh, Institute for European Environmental Policy, London**

#### **SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE**

Thank you for your letter of 10 June inviting evidence for this enquiry. As I am very pressed with work at the moment, I am not able to send you written evidence in as full a form as the subject deserves, but I felt you would prefer me to say something, rather than nothing at all.

One thing I can do is to send you a paper of mine (published in the *Journal of Planning and Environment Law*—Occasional Paper No 16, 1990) called *The European Community and Land use—An Incoming Tide?* which I presented at a conference two years ago and in which I emphasised the importance of the Lords'



Scrutiny Committee in no less than three places (pp 59, 61 and 62). On p 62 I said that the Lords' report on the Environmental Impact Assessment Directive, and the debate that followed, played a key role in persuading the government to withdraw its opposition. I do not know how often this can be said.

Let me also say that without the reports of the Environment Sub-committee I am quite sure that EC environmental policy would not be as well known as it is in Britain. The Lords' procedure ensures that the interested parties have to think about proposed EC legislation and have to clarify any objections that they may have since they are likely to be questioned on it. This is in contrast with the rather loose procedure followed at hearings of the European Parliament.

For anyone analysing EC policy, such as those in this Institute, the Lords' reports provide invaluable evidence of the views of the major interest groups, including the British government, at a particular time. They also shed light on the EC legislative process which is otherwise all too secret. It cannot be repeated too often that EC policy making needs scrutiny, and that the European Parliament cannot do it alone.

The impact of the Lords' reports abroad are much more difficult to assess. I know that the reports are read by Commission officials but, as it is to be expected, they tend to quote from the reports when it suits their case but not otherwise.

I hope these brief comments are of some help even if I have not dealt with all the questions which you have raised.

12 July 1991

**Letter from Professor J. M. Harrington, Institute of Occupational Health, University of Birmingham**

#### SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE

Thank you for your letter of 12 June asking for my views on the Workings of the Committees of the House. I am pleased to respond. I shall talk mainly about Science & Technology as I have been honoured to advise that Committee for a long report, but shall also say a word or two about the European Communities Committee which I have advised once for a shorter period.

Firstly may I say some general points. Although I have had no dealings with Commons Select Committees (which I understand are somewhat "adversarial"), I was most impressed by the manner and spirit in which their Lordships conducted their business. It was professional, gentlemanly/lady like and efficient. The cross bench faction was a strong element in the Committee structure and added that vital ingredient of the intellect and specialist knowledge to the deliberations. They may not be an elected House but the breadth and depth of professional knowledge at the disposal of the House is formidable. The political appointees—if I may call them that—played their part with a commendable absence of political point-scoring. The whole process of bringing together a group of committed intelligent people intent on producing a report which will mean something, as well as influencing public and political opinion.

The Gregson Committee Report on Occupational Health & Hygiene (1983–84) was a watershed in thinking on this subject and the most important "official" report since Robens in 1972. It produced a disappointingly negative response from the Government but still influences thinking on the profession and had the salutary effect of strengthening the resolve of the Health and Safety Commission (and its Executive) and providing them with the impulse to do more. Indeed they have endeavoured to implement a number of Gregson's proposals despite Government inertia. It could be argued that an update of this report might be a valuable exercise in view of the volume and speed of proposed European legislation in this area, possibly in collaboration with the European Communities Committee. Another area of related interest would be the state of teaching and research in science and technology but particularly, from my biased state, in applied medical research such as occupational health.

The European Communities Committee Report on Visual Display Units (1988) produced a valuable and unequivocal view on a proposed EC Directive which strongly advocated abandonment of the proposed directive. The effect of the report was minimal, in my view. Not due, I should add, to a lack of authoritativeness but overtaken by the speed with which the EC moved on this issue. If the Committee is to be effective it must learn of EC proposals at an earlier date—preferably before they are officially drafted—as thereafter they seem to develop an inexorable life of their own. Again the Committee acquired and sifted the scientific evidence and drew, in my view, the correct conclusions. But to no avail. This venture into EC "Social Affairs" legislation was, I understand a "toe in the water". More needs to be done but at an earlier stage in proceedings.

From my view point as an external adviser and observer, I have been impressed by the diligence and quality of the Committee work. It is driven, by and large, by committed cross benchers and commands considerable external respect and attention. Its influence on the legislation in the other House—and in Brussels—cannot be judged by me.

I hope these views are helpful to your deliberations. I would be happy to amplify and explain my points further if that was considered beneficial to their Lordships.

27 June 1991

### **Letter from Mr Peter Hill, BBC Parliamentary Correspondent<sup>1</sup>**

Here are my observations on the coverage of Lords Committees, in accordance with your request of 12 July 1991. I have concentrated on my perceptions as a broadcaster, as that would seem the most useful.

#### **INFORMATION**

Liaison with the Lords is rather sporadic, and broadcasters are not always aware of what is happening in Lords Committees. It would be sensible for the Principal Clerk regularly to discuss the coming week with the Producers of “In Committee” and “Scrutiny”, on the preceding Thursday or Friday when decisions are made about radio and TV coverage. Inevitably the programmes concentrate on the Commons Select Committees, which are more topical and less technical; but “flagging-up” a Lords Committee hearing of general interest would be helpful. Of course the Committee stages of Bills are frequently covered at the moment on the floor of the House, in “Today in Parliament”—recently debates on dangerous dogs, and the criminal justice system, for instance, were given good coverage. If Bills went upstairs, they would be likely to get less coverage, because of the competition from other sources, the need for extra staff, and the expense. Cameras in a committee room cost money, and the interest of the subject matter must be strong enough to justify their presence.

#### **ROOMS**

Obviously broadcasts can only be done from committee rooms which are wired up for sound and/or vision; the number of such rooms is currently limited, and any committee hearing of broadcastable interest would have to meet in one of those rooms. Currently some of the audio cables from Rooms 3, 4, 3A and 4A and the Moses Room, are damaged, and Westminster Audio’s assistance is needed to get an output from these rooms.

#### **COST**

The decision to televise or not is partly a commercial decision as well as an editorial one; the costs are shared, and therefore the greater the interest, the more outlets for the material there will be, so the lower will be the cost per outlet. Ideally, the hearing would attract “Westminster”, “Scrutiny”, ITV, Sky, and perhaps some regions as well. Regions have strong interests in such matters as fishing, dockyards, nuclear power, or aspects of farming. It would be advantageous if at least one Lords Committee Room, 3 or 4, were cabled up for direct vision transmission, together with improved lighting. (As in Commons Committee Rooms 8 and 15.)

#### **INTEREST**

Potentially interesting committees sometimes turn out to be dull, so coverage does not always guarantee transmission; it is not uncommon, at both ends of the House, to record a session and then decide not to use it, on normal editorial grounds. This happened recently, in my case, with the leaders of the two main parties at Strasbourg. When putting together “In Committee”, for example, it’s the weakest material in terms of listener interest that is jettisoned first.

#### **REPORTS**

I cannot recall a press conference being held in recent years to launch a Lords Committee report—though I am sure there has been. In the Commons it’s quite usual for a chairman to call in the media to draw attention to a major report. It would be helpful if Lords chairmen did this if they feel their report is going to make news. Sometimes we only discover about Lords reports after they have come out.

<sup>1</sup>The views expressed in this letter were endorsed by Mr Iain MacWhirter, BBC Presenter (including the programme “Scrutiny” on committees).



## CONDUCT OF COMMITTEES

One often gets the impression that the Lords are indifferent to whether their committees are covered or not; after all, one feels, it's the quarrying of facts and the ultimate report that are what really matters to the participants.

However, as broadcasters, part of our role is to show both Houses at work, and to explain the democratic process; and that is difficult if the committee and witnesses are engaged in what amounts to an almost private and technical series of exchanges, irrespective of who is listening. I recently went to a Lords Committee where the chairman handled all the questions, which were numbered, and the witnesses replied to each in turn from a prepared script; several members of the committee, though present, scarcely spoke at all. There was no evidence of "sharing out" of aspects of the enquiry between committee members, so each made a contribution. In contrast, some hearings of the committee on unemployment, chaired by Lady Seear, or the committee looking at scientific funding and research, were lively and relevant.

In short, members of Lords Committees might think a little more about making their doings more accessible to listeners, in the era of broadcasting, by their use of language, their organisation of material, and the liveliness of their questioning. This assumes they would indeed like more coverage, or at least continuing coverage, of their proceedings where appropriate. The public certainly appreciate, and comment on, the great range of expertise in the Lords; and as broadcasters, trying to make our programmes interesting, we are certainly keen to relay it.

I hope the views in this letter can be treated as a formal submission to Lord Jellicoe's Committee. Thank you for asking me to contribute.

31 July 1991

**Letter from Sir John Hill**

Dear Mr Pownall,

Thank you for your letter on the Select Committee on the Committee work of the Science and Technology Committee.

My view is that the Committee has produced extremely good reports over the years. It has had a membership of people who have a good understanding of the subjects to be studied and who have sought to elicit facts and information in a non-confrontational way. They have also by visits and associated discussions with the people directly concerned, obtained a better feel for the problems than can be obtained from formal on-the-record questioning alone. I would strongly recommend that this approach be continued.

Other Government Committees sometimes adopt a confrontational approach and this, together with the reticence imposed by everything being on the record, can result in a report which is less complete and which is accordingly of limited value.

It is difficult for me to judge how much weight the Government of the day gives to reports from the Upper House. The reports give a balanced and mature judgement on the issues studied. This should be given full and proper weight in the government's decision making process. I believe the Government of the day could with advantage do more in this context.

4 July 1991

**Letter from the Clerk to the Director of Parliamentary and Classified Printing, HMSO**

The above Committee was appointed earlier this year "to review the committee work of the House and to make recommendations". The Chairman is Lord Jellicoe. They are reviewing the work of the two permanent Lords' select committees, the European Communities Committee and the Science and Technology Committee and seeking to establish whether there are other policy areas where Lords' Committees could make a useful contribution. The Committee hope to report to the House by Christmas or soon thereafter.

The written evidence submitted on behalf of the European Communities Committee included the following passage:

"The Committee also hope that your Committee will consider the question of HMSO printing, publication and distribution of Committee reports. We realise that relations between the House and HMSO go wider than your enquiry and are of more general Parliamentary significance. But we are disturbed by the high cost charged to the public for Committee reports which places them beyond the

budget of many individuals and even organisations. All the report and much of the oral evidence are now prepared for publication by the staff of the Committee Office on word processors which represents a substantial cost saving to HMSO's Vote leaving them responsible for type-setting the written evidence and distributing the completed publication. The Allied Service Vote ends in about eight months' time and negotiations between the House and HMSO will take place. Perhaps your Committee could recommend that the negotiators ensure that the price of reports reflects the actual cost of production. This is certainly not the case at the moment because, in spite of the savings we have introduced through the use of computers, the savings have not been passed on to the customers."

The Committee, chaired by Lord Jellicoe, would much appreciate your advice and comments on the points mentioned above so that they can include some mention of this matter in their report. In the normal way, any such response you make will be printed with the evidence. It would be helpful to have some general information about HMSO's pricing policy with regard to Select Committee reports; and whether there is any likelihood in the future that the cover price might reflect more closely the production cost of a particular product. Could committees of the House of Lords, for instance, be given what could be described as incentives to seek the most economical production methods, such as the use of disks and camera-ready copy?

I would be grateful to receive any response to the points raised by early November to meet the Committee's deadline for their report.

18 November 1991

### Memorandum by HMSO

#### HMSO PRICING POLICY FOR SELECT COMMITTEE PUBLICATIONS

1. As with most Parliamentary items, Select Committee publications are not priced individually in relation to the actual costs incurred, but by reference to a standard scale that establishes a cover price based principally on the page content.

2. This well-established practice ensures consistency of pricing, in that items of similar size and appearance being published at the same time will have similar cover prices, despite the fact that one may be of wider interest than the other. Also, scale pricing means that customers do not need to pay more just because a particular item has had to be printed to an exceptionally fast timetable (thereby incurring premium rates) to meet the needs of Parliament, or because it has been printed under expensive security conditions. Finally, scale pricing enables the many hundreds of papers that are produced to tight timetables to be priced quickly and economically.

3. The pricing scales are all reviewed at least annually with the aim of ensuring that, taken overall, they are adequate to generate sufficient revenue to cover the costs of production, storage, distribution etc and make an appropriate contribution towards achieving the financial targets set for HMSO.

4. In the case of Select Committee publications, they were for many years priced in accordance with a general Parliamentary scale that also encompassed various other House Papers. However, in 1987 it became clear that the low print-runs and high production costs of Select Committee publications were having a particularly adverse effect on this scale. Accordingly, a separate scale was created for them with somewhat higher prices. Successive price increases since then have all been somewhat steeper for this scale than for other Parliamentary scales, with the result that the current prices for Select Committee publications are, on average, some 30 per cent higher than those for other House Papers. Nevertheless, there is still a way to go before full viability is achieved.

5. HMSO welcomes the contribution made by the European Communities Committee and others who now submit "copy" in disc or camera-ready form, thus avoiding the necessity to typeset material anew. This, coupled with the pricing action described above, is narrowing the gap. Nevertheless, the low demand, high page content, and tight production timetables of many reports mean that sales revenue still does not cover costs, even with the benefit of electronic or camera-ready "copy".

6. Whilst recognising the desirability of offering incentives to hasten the introduction of more economical production methods, HMSO would prefer to see scale pricing retained. It would be hard to explain to a customer buying two different Select Committee reports with identical page content why one should be priced significantly more than the other simply because in that case the Committee submitted "copy" in camera-ready form, whilst the other did not. To introduce this sort of differential pricing would undermine the principles of scale pricing which have stood the test of time and been accepted by successive Governments.

7. However, once full viability is achieved for Select Committee publications as a category, HMSO would be happy to discuss with the relevant House officials the introduction of a discount scheme covering copies supplied to Parliament. At present these are all bought at the full cover price, but a discount might then be allowed on those Select Committee publications where the "copy" was provided to HMSO in disc or camera-ready form.



8. To introduce such a scheme whilst losses are still being sustained would be counter-productive, since prices would need to be set even higher in order to accommodate the discounts without increasing the overall deficit. Nevertheless, those Committees who are using new technology to avoid the need for rekeying at HMSO are helping to limit the size of the annual scale increases and are hastening the day when the introduction of a discount scheme might be possible. There are also, of course, other benefits in being able to exercise more control over “copy” and in reducing the requirement for proof-reading.

Gordon Parfitt, Director of Parliamentary and Classified Printing, HMSO.

November 1991

### **Letter from the Institute of Personnel Management**

Further to our correspondence of 10 and 14 June 1991 I set out below the views of the Institute of Personnel Management on the issues surrounding the committee work of the House of Lords. I apologise for our not meeting your deadline but our consultation process combined with holidays resulted in some delay. I hope we are not too late with our views.

The Institute has experience of giving written and oral evidence to the various Committees of both Houses and to analysing their output. We have found that the opportunities provided by the Committee process for the Institute to get over the profession's view of aspects of personnel management to be very useful; we have always found that the output of committees to be valuable, well thought out and informed. We particularly consider the reports prepared by the House of Lords Sub-committee C of the EC Committee to be of a very high standard. The Institute supports the objectives of the Committees to both Houses of Parliament.

We believe that Committees of Members of the House of Lords can make a unique contribution to debate in the United Kingdom. We have found that House of Lords Committees carry out their reviews in a truly non-political atmosphere. The debate regarding the evidence can take place in a more leisured fashion than is sometimes feasible elsewhere, and the subjects and discussion can be more wide-ranging and strategic.

The Institute's interest lies in any matters pertaining to employment and the effective use of the nation's human resources. The House of Lords has tended to deal with these matters in an *ad hoc* fashion. Needless to say, we believe that this is an area deserving of a more formalised approach, and to this end we would urge the formation of an Employment Affairs Committee. There would, of course, need to be substantial co-ordination in the work of this Committee, the European Communities Committee and the Employment Committee of the House of Commons. The fact that “employment” is often a matter cutting across many Government Departments suggests to us a remit covering all aspects of people at work would be particularly useful.

As regards specifically the operation of the European Community Committee, we have already acknowledged the excellent work done by Sub-committee C. I suppose our only concern would be to suggest that if an Employment Committee were established its remit should cover both national and European aspects. This would reflect the reality that the United Kingdom is part of Europe and that, whatever people might think, Directives do have a habit of ending up as law!

I hope these views are of interest to you.

22 July 1991

### **Letter to the Chairman and submission from the Chairman of the Law Commission**

You will no doubt be aware that the Principal Clerk of Committees has invited the Law Commission to comment, if it wishes, on the proposal that the House of Lords might use special standing committees to consider and take evidence on law reform Bills, including those implementing proposals of the Law Commission. I have discussed this possibility with my fellow Commissioners, and the views expressed in the attached submission are those of the whole Commission.

I hope that the comments in the submission may be of some assistance, but please do not hesitate to get in touch with me if I can help further.

The Hon Mr Justice Peter Gibson

## SUBMISSION OF THE LAW COMMISSION

The Law Commission supports with enthusiasm and gratitude the suggestion of the Lord Chancellor that the House of Lords might use special standing committees to consider and take evidence on law reform bills with a view to facilitating the passage of such bills onto the statute book.

The Commission in its last annual report for the calendar year 1990 (Law Com No 195 which was laid before Parliament in March 1991) expressed its concern at the increasingly poor record of implementation in recent years of law reform bills intended to give effect to Law Commission proposals (see paras 1.5–1.7). The record has grown even worse since then: for the third Parliamentary session running, the Government's legislative programme includes no bills implementing our reports and, as we forecast, no Law Commission law reform bill will be enacted in 1991. Shortage of Parliamentary time for such bills is the reason most frequently given by Government for this failure, notwithstanding that the Government may have approved the policy of the bills. We therefore support any proposal, such as the one being considered by the Select Committee, which might increase the rate at which Commission proposals reach the statute book.

If that proposal were adopted, it would no doubt be for the special standing committee in each case to decide whom it wished to call to give evidence. The Commission would be willing and indeed anxious to assist such a Committee in its work. That assistance is likely to be most easily and effectively given if bills are brought before the committee reasonably soon after they have been reported on by the Commission, when the signatories of the report and the staff who worked on it are more likely to be still in the Commission's service. However, even in a case where the personnel of the Commission has changed by the time of the committee hearing, arrangements could be made to enable the committee to investigate fully the policy of the report.

**Letter from Mr Hamish Adamson, Director (International), Legal Practice Directorate (International),  
The Law Society**

## SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE

I am writing in response to your letter of 10 June, inviting written evidence to this Select Committee.

The only comments I have to make are on behalf of the Joint Working Party of all the Bars and Law Societies of the United Kingdom on Competition Law (in particular European Community Competition Law) on the role and work of the European Communities Committee of the House of Lords. The Working Party has submitted written and oral evidence to this Committee on a number of occasions in recent years on a variety of issues.

Our view of the impact and influence of the Committee's reports is that their standing could not be higher. They are substantial documents in their own right and contain a great deal of valuable material and insight. Indeed as part of the consultation process on European Community legislation in the Community as a whole they are probably unique and we know that they are taken very seriously by the Community institutions themselves.

On the wider issue of the role of European scrutiny within the United Kingdom Parliament and whether it may need to change as the Community develops, we have two points to make:—

- (i) It might be appropriate for the relevant professional bodies, such as the Bars and Law Societies, to be consulted on a regular basis to ascertain whether there are particular issues which might be investigated or reviewed by the European Communities Committee.
- (ii) There is a continuing need for a national body with the standing of the European Communities Committee to pay close attention to the manner in which the Commission of the European Communities discharges its functions, particularly in areas such as the application of EC Competition Law. It is a common-place that there is an absence of democratic control of the Commission under present institutional arrangements and it is not sufficient to rely upon the European Parliament to discharge this function.

I hope these brief comments will be of assistance to the Select Committee.



### Letter from Mr Anthony Lester, QC

Thank you very much for your letter of 22 October 1991 enclosing a copy of the letter from Eileen Denza of 20 May 1991.

I am grateful for the opportunity to explain my reasons for proposing to your Committee the setting up of a Parliamentary Committee to scrutinise Bills with reference to the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Although the United Kingdom ratified both treaties many years ago their provisions have never been directly incorporated into domestic law. The position taken by successive Governments has been that incorporation is unnecessary because domestic law and practice match the obligations imposed by the Convention and the covenant.

The United Kingdom has been under increasingly strong pressure from the UN Human Rights Committee to incorporate the rights and freedoms of the Covenant into domestic law. This, of course, raises the contentious issue as to whether there should be an enforceable Bill of Rights in this country.

However, the case for a Parliamentary Committee does not depend in any way upon the arguments for and against incorporation. There is at present no Parliamentary scrutiny of proposed legislation (primary or subordinate) in the light of binding international human rights norms. Whether one is in favour or against the creation of more effective domestic remedies for breaches of the Convention or Covenant, everyone would surely agree that it is desirable for Parliament to have regard to these important international obligations before enacting laws. It goes without saying that the Government is well aware of our international obligations and receives legal advice from time to time about whether legislative measure or administrative actions will be successfully challenged under the Convention. However, such advice remains necessarily confidential because it is given by the Government's legal advisers.

If a Parliamentary Committee were set up to scrutinise proposed legislation, proper account could be taken of informed views about the international human rights implications before the legislation was enacted.

I believe that other jurisdictions, in the Commonwealth and elsewhere in Europe, ensure some parliamentary scrutiny of legislation on these lines. However, I doubt whether it is necessary to assemble precedents in order to convince your Committee of the value of such an enterprise.

It is strongly arguable that the terms of reference of the proposed Committee should not be confined to the Convention and to the Covenant but should include all of the international human rights Conventions to which the United Kingdom is party, including, for example, those dealing with race discrimination, sex discrimination, torture, and economic, social and cultural rights. I would be in favour of this broader mandate and believe that it would be workable. There are expert bodies in this country well able to draw attention to the relevant provisions of these binding legal instruments. The fact that some of their provisions (notably dealing with economic, social and cultural rights) are not justiciable, makes it more necessary that they should be taken into account by the executive and legislative branches of Government.

I should add that a strong argument in favour of establishing this Committee is that the Government becomes liable on the international plane for breaches of the Convention and Covenant by Parliament in circumstances in which Parliament has never considered the relevance of the particular treaty obligations at stake. It seems to me that Parliament should at least be aware of the international legal implications of its acts and omissions when exercising its legislative functions. This applies most strongly where the obligations are justiciable (as under the Convention). It also applies in a different way to the non-justiciable obligations.

My only reservation about this proposal is that it might persuade some that it was unnecessary to create more effective domestic legal remedies in this area if a Parliamentary Committee were given the scrutiny functions to which I have referred. I should like to make it clear that, in my view, this is not at all the case. My reasons for favouring more effective Parliamentary scrutiny do not in any way diminish the need for more effective judicial scrutiny. The decision of the House of Lords in the *Brind* case underlines the serious gap between United Kingdom judicial review and what is required under the Convention and Covenant.

If I am able to help you or your Committee with any further information on this important subject, I would be glad to do so.

### Memorandum by Professor Juliet Lodge, European Community Research Unit, University of Hull

The Lords' European Communities Committee work is highly regarded across Europe. Its reports are of high calibre, informative and comprehensive.

#### EUROPEAN SCRUTINY COMMITTEES WITHIN NATIONAL PARLIAMENTS

The role of such committees varies from national parliament to national parliament. The definition of their role inevitably determines largely the kind of influence they can exert. For what purpose are they charged with a scrutiny function? Can they influence the content of EC legislation before it is either (a) formally tabled by

the Commission or (b) formally adopted by the Council of Ministers? None genuinely have such a capacity. Instead, their scrutiny is more directed towards what their national government purports to do or actually undertakes. Even then, such scrutiny falls short of comprehensively influencing the content of legislation on a consistent, regular and effective basis. The minutiae may be altered on occasion but as a general rule such committees (and notably those in the United Kingdom) have to try and influence the environment within which decisions are taken. To that end, efforts may be made to maximise information available to decisionmakers. No matter how effectively such a role has been exercised in the past, the evolution of European Political Union will impose different and additional demands on national parliaments.

#### EPU AND NATIONAL PARLIAMENTS

The EC's and hence the European Union's institutional set up has embryonic federal features: it has the genuine characteristics of a European polity. EC law is supreme in cases of conflict with national law. Over 50 per cent of legislation enacted in the member states originates in the supranational setting. The steady Europeanisation of virtually all areas of legislative activity is proceeding apace. The basis for a federal-type bicameral parliament (the European Parliament and the Council of Ministers) exists and there is considerable and sustained pressure for a transformation of their respective roles to allow them to develop as co-equal partners in the ECs legislature.

What the EC lacks is effective parliamentary influence on and control over the content of legislation and over its adoption by the unaccountable Council of Ministers: hence the concern over the EC's democratic deficit. The deficit is largely construed in terms of deficiencies in the legislative process but is not confined to it.

Since it is axiomatic to acknowledge that by and large none of the member states' national parliaments exercises effective control and influence over EC legislation, the question is what role can national parliaments play in the evolving European Union? Are they becoming increasingly obsolete or can they play a role that would contribute to effective, efficient, transparent, accountable and democratic legislative procedures in the European Union?

#### SUBSIDIARITY

The principle of subsidiarity rests on the premise that no task should be carried out at supranational or national level if it can be better accomplished at local levels. It is therefore designed to avert centralisation for the sake of centralisation. It prescribes devolution.

#### THE HIERARCHY OF NORMS

Devolution is also enshrined in additional developments linked to EPU and these are likely to enhance the prospective role of national parliaments. The Commission's Composite Working Paper, for example, looks at a hierarchy of norms. The underlying principle is that where the EC/Union is to act, it shall do so by providing (as it has in the past) the broad general principles governing the area in question. The implementation of the principles will however fall to national and regional authorities. This increases the possibility for the national parliaments (and/or regional parliaments) to play a role.

#### REGIONALISATION

The regionalisation of Europe is a feature of the 1990s and finds expression through the structural funds and various economic development programmes. (It also underpins the macro-level regional issues advocated by periphery states and those in favour of federal type financial equalisation measures).

Within member states that do not have regional parliaments, it may increase pressure for their creation. This would have consequences for the European roles of national parliaments. Concerted action between the two will be needed and constructive working links will be essential. In a more obviously "regionalised" Europe (sometimes called the Europe of regions) it would be most unhelpful if national parliaments saw regional parliaments/assemblies as inferior subordinates. Direct links between regional parliaments/assemblies and the Commission are highly likely and can be expected to reinforce the representations now made to the Commission by local governments. Moreover, for the United Kingdom, the issue of additionality poses even greater problems for regional tiers of authority in their interaction with national levels of government.

There has also been some pressure over the past few years for the creation of a Chamber of the Regions at the European level. This is not necessarily desirable. There is a strong regional contingent among some MEPs already. There has also been advocacy of regional representation within the Economic and Social Committee, and some attention has been paid to other states following the Bundesrat's practice *vis-a-vis* scrutiny of the EC. Yet, additional formalised, institutionalised inputs are likely to render EC decision making still more complex without necessarily yielding results in terms of more effective, transparent and democratic outcomes.



If regional interests are to be better represented in the United Kingdom's case in future, then it may well be that existing (and/or additional) EC scrutiny committees might be given a regional brief. It must be stressed that any such "regional brief" should ideally conform to the much larger concept of region applied by the Commission. It would not necessarily neatly coincide with existing local government boundaries. Any liaison between such committees and regional bodies would also have to reflect wider regional interests and would inevitably have consequences for the organisation and representation of such interests at national level.

#### NATIONAL PARLIAMENTS: EURO-LEVEL REPRESENTATION

A Senate of national parliaments has its advocates. However, this would simply add a tier to the existing legislative system and it is not clear that such a chamber would either be imbued with powers to enable it to exercise a genuine legislative, representative, control or scrutiny role.

If national parliaments (and their responsible committees) wish to exercise influence in the European arena, there are alternative and more constructive possibilities.

The nature of the co-operation procedure (and any expansion of it and/or incorporation into it of a co-decision procedure or a conciliation procedure) is such that MEPs are obliged to act within tight deadlines. Already, a premium of expertise is apparent. Such expertise may be provided by the secretariat of the European Parliament serving its various committees. Their sources of information may not necessarily, however, be comprehensive or complete.

There is a case for ensuring that national European committees do several things in order both to accommodate the regional trend and to amend their current practices to:

- strengthen their contact with the European Parliament's committee secretariats and the members of the Committees;
- align their timetables with those of the European Parliament's committees;
- ensure that they significantly improve the flow of information, especially on legislative proposals and legislative amendments, to their national parliamentary committee secretariat staff and Members and between them and their EP counterparts;
- ensure that their committees are not scrutinising redundant draft legislative proposals;
- improve contact with the supranational party groups' secretariats and Members in the EP;
- concert their endeavours with other national committees where common interests are apparent and where a coalition of forces may increase their influence;
- engender close mutually beneficial links with MEPs and secretariat staff;

In short, wholesale Europeanisation—with all it implies for the management of work and for the discernment of strategic goals—is inevitable. This Europeanisation must, however, take regional perspectives into consideration as well.

#### SCOPE OF NATIONAL COMMITTEES

The assumption is that national parliaments' committees will continue to exercise any influence they can bring to bear on the EC legislative process indirectly through MEPs (and possibly through links with Commission and Council secretariat members).

The scope of EC legislative activity is vast and implementing EC legislation and ensuring compliance with it is time-consuming.

Should national parliaments refocus their scrutiny activities?

Since the scope of the European Union is widening, it would be appropriate for national parliamentary committees to reconsider the deployment of their scrutiny time and interests.

A Committee like that of the House of Lords could undertake some useful investigatory work on the bigger issues of European Union in the medium to long term perspective of the 1990s. Issues that require attention concern not only EMU but the detail of membership enlargement, the impact on national and EC institutions and legislative procedures, the common foreign and security policies, the Union's links with WEU, CSCE and NATO, development policy, social welfare, cultural, educational and vocational policies. It is essential to take an expansive view of likely developments, and to make preliminary comparative examinations of questions, opportunities, challenges and problems either alone or through concerted studies with other committees in member states' parliaments and/or with EP committees and *independent* academic bodies. (It should be recognised that other parliaments may have far more comprehensive research back-up as well as additional means of influencing EC legislative outcomes). There is a role for future-gazing that explores options in a dispassionate way.

## STRATEGIC EVALUATION OF FUTURES v HIERARCHY OF NORMS: COMPATIBLE/OR MUTUALLY EXCLUSIVE?

A guiding principle for the future evolution of scrutiny committees' activities in the European Union might be to ensure that they continue doing those things at which they excel and which fill a gap. However, they also need to consider how they might cope with the Commission's suggested hierarchy of norms covering: the Treaty, law, national implementing measures or EC regulations, and administrative implementing provisions.

The advocacy of a hierarchy of norms is predicted on six main assumptions:—

- (i) that Delors' prediction of 80 per cent of legislation originating at EC level is not far off the mark;
- (ii) that from 1993 the nature of EC legislation will change. Basic regulations will gradually become as permanent and fundamental as national legislation;
- (iii) that national implementing measures will be adopted through adherence to the principle of subsidiarity and will be laid down on a case-by-case basis in each law;
- (iv) that the EP will play a genuine legislative role as technical and detailed matters are removed from its agenda;
- (v) that the overall effectiveness of decision making will increase as inter-institutional relations become more rational and balanced; and
- (vi) that the hierarchy of norms will clarify the system of Community acts so facilitating their consideration by national parliaments and authorities and abolishing the directive (currently seen as a hybrid instrument of ambiguous status).

This presents scrutiny committees with challenges and opportunities over a number of areas that require more detailed investigation. For example, how might such committees deal with a "law"? A law could be implemented partly or fully by member states. This would preserve the original intention behind the directives: the law would set out the general principles, and member states would select how to attain the goal prescribed. How do national parliamentary scrutiny committees fit in? Can they enhance their current position? Would they wish to enhance, through their own scrutiny activities, compliance with the law of their own or other member states? Could they usefully, thereby, enhance the Commission's role as watchdog and guardian of the Treaty in ensuring compliance with the law by all EC members? This is an area of particular interest to the United Kingdom.

Moreover, the evolution of a Citizens' Europe also opens up new possibilities and areas of EC action. The sheer scope and volume of activity cannot be managed at EC level alone. The Commission has suggested that private individuals, able to prove that a sufficiently flagrant infringement of a higher legal provision designed to protect them had occurred, might have the right to challenge regulatory acts.

Nor can national parliaments hope credibly to cover everything. A better balance of scrutiny activity and more effective scrutiny obviously lies with concerted action with appropriate partners be they other national parliamentary scrutiny committees, regional assemblies/bodies, EP committees and informal networking at all potential and secretariat levels.

## CONCLUSION

The current debate over European Union provides an ideal opportunity to reappraise thoroughly current scrutiny activities, priorities, procedures, objectives and liaisons.

The future will require a refinement of working practices and an extension of existing links. Issue prioritisation will be essential and this may well demand increase task specialisation. More generally, the purposes of scrutiny need to be re-examined with a view to deciding whether pre-decisional influence on the content of EC level measures is to be sought (and if so how), whether national Ministers are to be instructed or constrained in some way (if so on what, relatively few, issues and why), whether the emphasis is to be on ensuring compliance with the legal provisions (if so how is this to be managed), or whether the scope of scrutiny should be broadened.

There can be little doubt that the scope of activity will have to widen. Widening will also demand that issues are prioritised. At a procedural level, it will also be essential to ensure that scrutiny is accomplished in a way that allows those responsible access to the working documents being pursued at EC level. It is pointless for national scrutiny committees to be working on redundant draft documents that have already been amended by the Commission. On-line access to such documents might be a practical way of coping with this assuming that some kind of parallel scrutiny is to take place. It may be that such scrutiny is no longer feasible and that the committees might find that they can have greater impact and influence by doing investigatory work



(including the possibility of taking evidence on Government bills and controversial or major EC legislative proposals, and of public hearings) on key elements of the legislative programme as announced and presented by the Commission to the European Parliament. Whatever new tasks the committees assume, improved and strengthened links with the European Parliament, other national parliamentary and regional assembly/body committees would seem essential.

12 July 1991

**Letter from Dr D A Rees FRS, Secretary, Medical Research Council**

**SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE**

Thank you for your letter of 12 June and for the invitation to submit written evidence to the Select Committee. We have some, albeit limited, experience of the work of the Science and Technology Committee and of the European Communities Committee.

In relation to the Science and Technology Committee the report of greatest interest to the Council in recent years has been that on "Priorities in Medical Research". There can be no doubt that the report has had a very significant influence on the development of policy and administrative machinery, not least on the Government decision to appoint a Director of R&D in the Department of Health. The developments that have been influenced by the Select Committee's thinking will, I am sure, be of long-term benefit to medical research in this country.

On the European front there have been three recent enquiries of interest to the MRC:

- European Communities Committee: a Community Framework for Research and Development
- Science and Technology Committee: international scientific programmes
- Science and Technology Committee: definitions of Research and Development.

I find it more difficult to distinguish the impact that the reports of these enquiries may have had in highlighting issues from the impact of discussions on the same topics in other bodies. However, I think that the Committees have played a useful role in drawing attention to the weaknesses in the present arrangements for representing United Kingdom scientific interests in the negotiations over the development of the EC's Framework Programme, and to the confusion surrounding the principles of additionality and attribution.

It seems that one of the strengths of the House of Lords Committee system—and one of the reasons why reports have been influential—is the stability of membership and the expertise and experience on which they are able to draw. I think MRC interests are well covered by the existing Committee structure and I have no suggestions for changes. On working methods I would draw attention only to the question of timing. Committees are not well placed to respond quickly and their reports may lack impact because they come too late to influence key discussions. This is particularly relevant to the development of the EC Framework Programme where it is necessary to influence the Commission's thinking before formal negotiations begin.

On the question of subject matter I would hope that the Select Committee(s) will continue to take an active interest in European matters, in particular the United Kingdom input to the development and implementation of the EC Framework Programme, an issue of growing importance as the Community's investment in R&D increases.

5 July 1991

**Memorandum submitted by Professor Philip Norton, Professor of Government, University of Hull**

**BUILDING ON STRENGTH**

For most of the 20th Century, both Houses of Parliament have been chamber-oriented institutions. Relatively little use has been made of select committees with powers to send for persons, papers and records. The House of Commons has made more extensive use of committees for the committee stage of bills; but "standing" committees are anything but standing in the sense in which the term is used in other legislatures. The House of Lords did in 1890 appoint two standing committees on an experimental basis, but they were abolished in 1910 following complaints that they had introduced amendments of substance to the bills referred to them.<sup>1</sup>

The 1970s heralded an era of somewhat greater specialisation in both Houses. The most extensive, but not exclusive, change in the House of Commons was the establishment of the departmentally-related select committees.<sup>2</sup> A series of scrutiny committees had been recommended for the Upper House by the Lords Practice and Procedure Committee in its First Report in 1977.<sup>3</sup> During debate on the Committee's report, the Leader of the House, Lord Peart, conceded that there was "a strong current of opinion in favour of an experiment to try out the Select Committee's recommendation for scrutiny procedure";<sup>4</sup> but he proposed instead an experiment and a reference back to the regular Procedure Committee for detailed consideration of the problems involved. Lord Peart's proposal headed off the demands for immediate and extensive reform. Thereafter, he appeared to lose interest in pursuing the matter and the Procedure Committee found itself in some disarray. Rather than recommend the series of committees proposed by the Practice and Procedure Committee, it opted instead for the recommendation of two distinguished peers (Lords Shepherd and Sheffield) for the establishment of a Committee on Science and Technology.<sup>5</sup> The creation of this committee filled a gap left by the demise—in the committee reorganisation of 1979—of the Commons' committee on the subject; and the departmentally-related committees produced by the reorganisation appeared to render superfluous a parallel series of committees in the Upper House. The window of opportunity for a significant extension of the committee work of the House appeared closed.

Hence, almost by accident rather than design, the House failed to generate a system of investigative committees; and the traditions of the House have continued to foster a reluctance to take too much business away from the chamber. All peers are equal and therefore each is entitled to be heard. Hiving business off to small groups of peers, who may not represent precisely the views and dispositions of the House, militates against that basic principle.

The result is a limited use of committees. And in that there lies a particular benefit. The House has been able to place an emphasis on quality rather than quantity. Rather than emulate the House of Commons and rather than spread too thinly the expertise and commitment available to the House, the House has generated a committee structure in which skills and expertise are focused on important matters not covered, or not covered systematically or adequately, by committees of the House of Commons.

The Science and Technology Committee joined the European Communities Committee, established in 1974. The combination of working practices adopted by the committees and the expertise of the members has produced effective committees of enquiry. The use of evidence-taking sessions, of sub-committees, and of the expertise of peers who are not members of the Committee has meant that the European Communities Committee has proved a more effective body of scrutiny than its Commons' equivalent. The use of sub-committees by the Science and Technology Committee has also allowed for an effective marshalling of resources and expertise; and its practice of holding follow-up enquiries—ensuring important issues are not neglected—is one that committees in the House of Commons would do well to emulate.

The result of these working practices combined with members' expertise—and commitment—has meant that committee reports are typically thorough and well argued. Early in the 1980s, the chairman of the Commons' European Committee described reports from the Lords EC Committee as "voluminous and very full in their coverage" while a spokesman from the Department of Trade and Industry said they were "very useful"; he often recommended them as a source of reference to interested bodies.<sup>6</sup> There is a danger of misinterpreting such comments. They may be taken to suggest that reports are interesting but have little influence. Rather, what they point to is another dimension of the committees' effect. That is the educative, or informative, effect. Committee recommendations are typically based on thorough analyses and the analysis may be as important as, possibly more important than, the recommendations. Those analyses inform the committees' attentive publics. They inform the debate on subjects on which the committees themselves may set the agenda. They do so on the basis of the quality of the reports' contents. They do so also by virtue of the absence of similar bodies. As a study group of the Commonwealth Parliamentary Association commented in 1982, the reports of the Lords EC Committee contain "the only really deep analysis of the issues that is available to the parliamentary representative of the 10 countries in the Community".<sup>7</sup> This largely remains the case today, the lead being given by committees within two Upper Houses—the House of Lords and the Bundesrat—in the member states of the EC.<sup>8</sup> The Science and Technology Committee has been at the forefront in analysing and informing the debate on a range of issues, not least in recent years the relationship between science and government. Its report on Civil Research and Development in 1986 constituted a massive reference work for anyone interested in the subject as well as a major spur to debate on the United Kingdom's R&D needs.

This capacity to inform cannot be divorced from the committees' capacity to influence. By informing debate, the committees can influence the shape and direction of that debate, not necessarily in ways that can be observed and quantified. One way of understanding the impact of the committees in informing and influencing the debate is not by asking "What specific decisions have they changed?" but by asking "What would it be like now if these committees did not exist?" In the consideration of EC legislation, the Commission of the Community as well as other national parliaments would be the poorer; consideration of science and technology in the United Kingdom would be largely stilled. The *quality* of debate would be much diminished. The poorer the quality of debate, the poorer the quality of decision making; hence the fairly pervasive, but unquantifiable, influence of the committees.



This is not to say that the criterion of observable influence on particular decisions should not be employed; only that it should not be employed as the exclusive criterion for assessment. When it is employed, we find that the committees do have an impact. This is borne out in respect of the Science and Technology Committee by two recent studies, one by an academic participant-observer in Westminster, the other by the Reading Clerk of the House.<sup>9</sup> The latter focuses largely on the influence of the Committee since its inception. Though, as the author notes, “many recommendations fell by the wayside”—a feature hardly peculiar to Lords’ select committees—the Committee had an impact on government thinking and actions in many important fields, including the procedures adopted for consideration of science policy. Mr Hayter modestly claims that his survey “may give an impression of what the Committee has achieved”; he then provides 11 pages that constitute a litany of committee influence.<sup>10</sup>

The committees work within limitations, but the most important limitations are essentially external to the committees themselves. The House of Lords is necessarily constrained by the fact that it is not an elected chamber. Reports emanating from its committees cannot expect to enjoy the political legitimacy that attaches to reports from committees of the House of Commons. The European Communities Committee works within the context of an EC legislative process that works in ways and at a pace that it is difficult for the Committee to adjust to. And there are an increasing number of bodies seeking to influence government, both at the national and the supra-national level. Government may be more dependent on some of those bodies—for reasons political and economic—than on the non-elected Upper House. The Lords’ committees may thus be unique in the quality of their reports and fulfil roles that are distinctive, but they work within a busier political environment than before, one in which decision makers may be distracted by the demands of bodies with greater political clout than that enjoyed by the House of Lords.

These are important and largely inevitable constraints. There is little that the House of Lords and the committees themselves can do about them. But, within the context of these constraints, both the European Communities and the Science and Technology Committees work efficiently and effectively. The members of the committees appear largely satisfied with the work they do: a survey of the EC Committee a few years after it came into existence found members felt it worked satisfactorily with little room for improvement;<sup>11</sup> a more recent survey of members of the Science and Technology Committee produced a similar result.<sup>12</sup> The report by the Group on the Working of the House in 1987 found that these views appeared to be shared by many members of the House.<sup>13</sup>

There thus appears to be little demand for change as far as the two investigative sessional committees are concerned. I concur with that view. On the basis of a cost-benefit analysis, both committees must be judged extremely beneficial to the political system. At relatively little expense to the public purse, they draw upon particular skills, working practices and a bi-partisan commitment to public duty that contributes significantly towards a more informed domestic policy-making, and EC law-making, process.

This is not an argument for complacency. The fact that the committees work well at the moment is no guarantee that they will continue so to do. I would propose regular reviews, in the first instance by the committees themselves, of their resource needs, not least in respect of staffing; such reviews to take place at least once every three years. Given my later proposals, there may be a case for ensuring that the staffing provision be protected; this is a point to which I shall return. More immediately, there may be a case for changing the presentation of committee reports. While the content is usually excellent, the form in which a report is presented is a standard one. Given that it has to compete for attention in an increasingly crowded environment, there is a strong case for making the presentation of reports more attractive. Some government departments now present reports and White Papers in eye-catching form; there is no reason why the committees of both Houses should not do likewise.

My basic conclusion, though, is that both sessional committees do excellent work and are to be commended for it. That conclusion also forms the starting point for my consideration of whether or not, and to what extent, the committee work of the House should be extended.

The sessional committees are variously supplemented by *ad hoc* select committees of investigation and, on occasion, the House has appointed public bill committees to take the committee stage of bills. The use of *ad hoc* committees has grown in the past 10 to 15 years and those committees have resembled somewhat the sessional committees in the quality of their work. As Donald Shell noted generally in respect of Lords’ select committees “Reports almost invariably score well for their rigour in analysis, the lucidity and forcefulness of their argument, and their generally well-researched and sure-footed flavour.”<sup>14</sup> Some have been extensive and controversial. The Report on Overseas Trade in 1985 was rejected by government, ran into several editions within the first two years of its publication and, as Lord Longford observed, “prompted a major public debate on Britain’s trading prospects”.<sup>15</sup>

Public bill committees have not received the same attention, nor been held in the same affection by the House. Though provision for the appointment of such committees was made in 1968, the facility was only employed six times in eight years. It has not grown in popularity since. The Group on the Working of the

House found peers equally divided on the issue and the Group considered that the public bill committee on the Pilotage Bill was unsuccessful, not fulfilling its principal objective of saving time on the floor of the House. It recommended, or rather reiterated, using such committees only when the House faced acute pressure on time and when such committees were necessary to alleviate such pressure.<sup>16</sup>

In the realm of public policy, the two investigative select committees thus remain the core and permanent features of the committee work of the House. Should those two committees be supplemented by other committees on a more continuous basis? In particular, should there be a series of select committees to cover the principal government departments? And should there be a more extensive use of public bill committees?

#### A NEW SELECT COMMITTEE SYSTEM?

The Practice and Procedure Committee recommended, as already noted, a series of domestic committees in its 1977 Report, primarily for the scrutiny of bills once they had been introduced by the government in the Commons. The report of the Group on the Working of the House in 1987 noted that some peers felt that the existing committee structure was too heavily geared towards European affairs and that there may be a case for the use of more *ad hoc* committees or another permanent committee; but there was no suggestion of peers being in favour of a more comprehensive system of select committees.

The advantage of a series of investigative select committees would be that systematic and informed scrutiny could be undertaken of the various sectors of government responsibility in a way that is not possible on the floor of the House. This is a powerful argument and, to my mind, establishes a strong *prima facie* case for such committees. The experience of the existing committees would also suggest that such new committees would be able to operate in a non-partisan and informed manner.

What are the arguments against? The two most pertinent objections would be (a) that the committees would duplicate the work of the select committees in the House of Commons; and (b) the House would not be able to provide a sufficient number of peers with the time and expertise necessary to serve on the committees. The first argument I do not find persuasive; the second one I do.

The range of responsibilities of government departments is wide. The opportunity for a Commons' select committee to investigate anything more than a small number of a department's responsibilities is virtually non-existent. With effective co-ordination between committees in the two Houses, there is no reason why departmental select committees in the House of Lords could not usefully supplement the work of the committees in the House of Commons. There would be a cost to government in terms of the commitment of ministers and civil servants in giving evidence, but the benefit would be to the parliamentary process by reinforcing the critical scrutiny of government.

The creation of such committees, however, would be made difficult if not impossible by the demands it would make on the existing membership of the House. The existing European Communities Committee draws on the services of more than 100 peers each session. The Science and Technology Committee draws usually on more than 20 peers. (The figures for both include co-opted members.) If one adds to these figures those peers who are members of the Government or of the Opposition front bench, those who regularly attend but for reasons of infirmity or other commitments would not be willing to commit themselves to committee service, the result is an active membership that would be insufficient in number to service a range of select committees on a continuous basis.<sup>17</sup> Committee work is onerous and involves significant preparatory work for meetings. To create a series of permanent committees would hence necessitate reducing the size of the EC Committee (with a consequent diminution in the quality of its work) or appointing members not able to give fully of the time required to ensure a high standard of scrutiny of the sort presently offered by the two sessional committees.

In the absence of a commitment by government to increase substantially the number of working peers in the House (unlikely, not least on the scale required),<sup>18</sup> I would thus judge, albeit reluctantly, that the creation of a *comprehensive* system of investigative select committees is not a feasible proposition. I would be delighted to be proved wrong. On the basis of my figures (see footnote 17), there may be a sufficient number of Members willing to serve to enable a few such committees to be created; but, as I shall argue, their services might be better employed in a slightly different capacity.

#### MORE PUBLIC BILL COMMITTEES?

The principal case for the more extensive use of public bill committees is that they would save the time of the House. The pressures on that time have been increasing, especially towards the end of a session. It was those pressures at the end of the 1985–86 session that led to the appointment in December 1986 of the Group on the Working of the House.



As the Group noted in its Report, peers appeared evenly divided on the merits of such committees. The Committee on the Pilotage Bill had not saved the House time and the opportunities for the use of such committees were, in the estimation of the Group, limited. Hence the recommendation to which I have already drawn attention.

Given that such committees do not appear to save significant time, there appears little point in recommending the greater use of them in their present format. That, however, is not to say that the House should not make use of committees for legislative scrutiny; only that they should not be used in the format of public bill committees, nor for the primary purpose of saving time. There is, I believe, a case for the use of committees similar to the special standing committees for which provision exists in the standing orders of the House of Commons.

#### SPECIAL STANDING COMMITTEES

What I would recommend is a formal provision for the appointment of special standing committees (SSCs) to take the committee stage of certain bills. They might be described as a cross between public bill committees and select committees appointed to consider bills, but in fact would be much closer to—indeed, but a minor variant of—the latter. They would be allowed to take evidence for a set number of sessions, though I see no reason why the number of evidence-taking sessions should not be higher than presently provided for in the Commons.<sup>19</sup>

The value of such committees has been variously recognised by the Commons' Procedure Committee and in 1986 the House, against government advice, introduced a provision that would allow for any Member to move for a bill to be referred to an SSC.<sup>20</sup> The tragedy has been that government has been unwilling to support such motions and the 1986 provision has never been successfully employed; and only five bills in total, prior to 1986, were referred to SSCs on the motion of a minister.

The value of such committees has not only been recognised by various authorities, it has also been shown by experience. The first use of an SSC in the Commons—on the Criminal Attempts Bill—demonstrated the worth of the exercise. Twenty-seven witnesses drawn from a range of interested organisations gave evidence; the bill was variously amended (the first clause had to be replaced); and the Members serving on the committee—as well as those on subsequent SSCs—rated it a very or fairly worth-while exercise.<sup>21</sup> The value of such an exercise is also reflected in the use made by the Upper House of select committees to consider bills. Though the practice has been to employ them for private Members' bills, they have been useful tools of scrutiny.

The power to take evidence allows a committee to be much better informed about the contents and implications of a bill's provisions. The expertise on many subjects available in the Upper House does not render unnecessary the use of outside expertise. Rather, it strengthens the case for the use of such committees. Peers with a particular knowledge of the subject in question will know the most appropriate questions to ask of witnesses.

By taking evidence—if necessary, going on fact-finding missions<sup>22</sup>—a committee will be better able to undertake informed scrutiny of a bill's provisions. The exercise will also have a much broader relevance. By allowing groups to give evidence, a committee provides a means for groups to get their views on the record; groups gain a better appreciation of the parliamentary process; and their acceptance of the legitimacy of the measure under consideration will be considerably enhanced. Even if the bill is not changed in the way that a particular body proposes, the fact that the body has been given a hearing increases its willingness to accept the legislation once enacted. By probing witnesses, a committee is also likely to have a beneficial effect on those bodies called to give evidence, ensuring that they have thought through their arguments and checked their facts; or face the consequences for not doing so.

The willingness of groups to give evidence is clear from the experience in the Commons of SSCs and abundantly clear from the activities of select committees in both Houses. When the Lords' Committee on Laboratory Animals Protection invited comments from interested bodies and members of the public, it received more than 900 letters and memoranda. And the value of evidence-taking is abundantly clear from the experience of the investigative sessional committees.

There is thus a very strong case for the use of special standing committees, and an especially strong one in the case of the House of Lords given the non-partisan and informed approach that its committees can normally bring to bear. What arguments could be raised against the proposal? There are two principal objections.

The first is that it would not save the House much, if any, time. That I do not consider a valid objection for the simple reason that saving time is not being offered as a criterion for assessment. I advocate the use of special standing committees for the purpose of improving the quality of legislative scrutiny and hence of legislation; and not for the purpose of saving the time of the House. In other words, the proposal is offered for the benefit of the legislative process, not the benefit of particular peers. (I say particular peers since the House itself would benefit from an enhanced reputation.) The process would not necessarily save the time of the House; it is not designed to. However, this is not to say that this might not be a side-effect on occasion: if a bill emerges from committee after careful consideration, amendments having been made on the basis of hard evidence laid before the committee, peers may be less willing to table amendments or go over again the same ground at report stage. They may not—every peer retains the right to be heard—but it is a possible side-effect; but no more than that.

The second principal objection is that the proposal might not be practical because there would not be enough peers to serve on special standing committees. This objection falls, I believe, on the basis of the figures already offered in footnote 17. There may not be enough active peers available to serve on a comprehensive series of sessional—in other words, permanent—select committees. There would, I believe, be enough to serve on a small number of SSCs which, by their nature, would not be permanent. By virtue of not being permanent bodies—members would be appointed afresh to serve on each SSC—the commitment required in terms of time would be less; and by virtue of that, the number of peers likely to be available to serve would be greater.

The objections I believe thus fall. The case for the creation of such committees is powerful and I see no reason why their use should not become an accepted feature of the Upper House, building as it would on the existing strengths of the House.

*Selection.* In terms of selection, I would recommend the appointment of a small Business Committee to be responsible for nominating bills for submission to special standing committees. In addition to the Chairman of Committees, who would preside, and the Principal Deputy Chairman (in other words, the chairman of the EC Committee), I would recommend the appointment of the chairman of the Science and Technology Committee, the Government and Opposition Chief Whips, representatives of other parties and of cross-benchers, and three or four senior figures drawn from both sides of the chamber.

This committee would have discretion as to the criteria to be employed in determining whether a bill is or is not suitable for SSC consideration. Certain bills would be expected to be excluded from such consideration: short, non-contentious bills which can continue to be taken quickly in Committee of the Whole House and bills that are clearly partisan in nature (though defined in a manner similar to money bills; in other words, bills that are exclusively partisan, a category into which—like money bills—surprisingly few bills fall). This would leave most bills still falling within the scope of SSCs and the committee would be expected to determine those most appropriate for such treatment. There are obvious dangers in attempting to impose a straitjacket at the outset. The committee would need to take into account the number of bills involved, the availability of peers (and their particular expertise), and the nature and subject matter of the bills in question. Guidelines could be generated on the basis of experience. For the moment, I would place an emphasis on flexibility in order to ensure that resources are not over-stretched and that the quality of committee investigation—as exemplified by the sessional investigative committees—is maintained.

*Staffing.* The use of such committees clearly has staffing implications. Given that SSCs would be employed regularly, it would not be acceptable to draw on the existing staff that service the EC and Science and Technology Committees. Their position should, in effect, be protected. Additional staff would need to be recruited to service the new committees. The burden would, of course, be greatest towards the end of the session. Earlier in the session, staff could be deployed elsewhere or, indeed, utilised to do preliminary work for the Business Committee on the nature and content of bills being considered in the House of Commons.

There would need to be a greater use of committee rooms and staff would need accommodating, but this does not create insuperable problems; accommodation in particular creates less problems than in the other half of the Palace of Westminster.

Overall, I would judge the resource implications to be small in relation to the benefit to be gained.

## CONCLUSION

The work presently undertaken by the two sessional investigative committees is of extremely high quality and is generally recognised as such. I do not recommend any major change to their activities. There is a strong case in principle for the establishment of a series of select committees to supplement their work, covering the principal areas of government activity; but the drain on the active membership of the House would be such as to dilute the work of the existing committees or else render the proposal an unworkable one. There appears little point in utilising public bill committees, as presently constituted, for the committee stage of bills, not least given that they appear unlikely to fulfil the main purpose for which they are appointed—that is, to save the time of the House.



However, there is a case for the appointment of special standing committees to take the committee stage of selected bills. Peers frequently complain about the undigested, or raw, nature of legislation that comes down the corridor from the other place. The reputation of the Upper House, indeed one of the primary justifications for its continued existence, derives largely from its skill as a revising chamber. The use of SSCs, allowing for the taking of evidence as a means of improving the provisions of a bill, would add mightily to the quality of the House's revising skills. I recommend strongly that use be made of such committees at the earliest opportunity.

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July 1991

Professor of Government,  
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#### NOTES

- (1) Peter Bromhead, *The House of Lords and Contemporary Politics 1911–1957* (London: Routledge & Kegan Paul, 1958), p 131.
- (2) On the Commons' select committees, see especially Gavin Drewry (ed), *The New Select Committees*, 2nd ed (Oxford: Oxford University Press, 1989).
- (3) *First Report from the Select Committee of the House of Lords on Practice and Procedure*, HL 141, Session 1976–77.
- (4) *HL Deb* 385, c. 261.
- (5) These points are taken from my conclusion in Philip Norton (ed), *Parliament in the 1980s* (Oxford: Basil Blackwell, 1985), p 154.
- (6) David Morton, "The Role of the House of Lords in the Scrutiny of EEC Legislation", an undergraduate dissertation completed under my supervision in the Hull University Politics Department, 1984, p 26; and quoted in Cliff Grantham and Caroline Moore Hodgson, "The House of Lords: Structural Changes", in Norton, *Parliament in the 1980s*, p 126.
- (7) The Report of a Study Group of the Commonwealth Parliamentary Association, "The Role of Second Chambers", *The Parliamentarian*, 63 (4), October 1982, p 207.
- (8) Philip Norton (ed), *Parliaments in Western Europe* (London: Frank Cass, 1990), pp. 150–51.
- (9) Cliff Grantham, "Select Committees" in Donald Shell (ed), *The Contemporary House of Lords* (Oxford: Oxford University Press, forthcoming); and P D G Hayter, "The Parliamentary Monitoring of Science and Technology in Britain", *Government and Opposition*, 26 (2), Spring 1991, pp 147–66.
- (10) Hayter, "The Parliamentary Scrutiny of Science and Technology in Britain", pp 154–65.
- (11) David Brew, "National Parliamentary Scrutiny of European Community Legislation: The Case of the United Kingdom Parliament", in V Herman and R van Schendelen (eds), *The European Parliament and National Parliaments* (Farnborough: Saxon House, 1979), p 249.
- (12) Grantham, "Select Committees" (forthcoming).
- (13) *Report by the Group on the Working of the House*, HL 9, session 1987–88, paragraph 89.
- (14) Donald Shell, *The House of Lords* (Oxford: Philip Allan, 1988), p 198.
- (15) Lord Longford, *A History of the House of Lords* (London: Collins, 1988), p 209.
- (16) *Report by the Group on the Working of the House*, paragraph 27.
- (17) The "active membership" of the House is generally taken to comprise those who attend at least one-third of the sittings. Even on this generous definition, the active membership since the early 1980s has been approximately 380; in other words, less than 60 per cent of the membership of the House of Commons. Assuming this figure encompasses all those in the categories mentioned, the subtraction of committee members and frontbenchers reduces the figure by more than 160. Of the remaining active members (just over 200), my presumption would be that well over half would not be able to make the necessary commitment for continuous and time-consuming service that committee membership would entail.
- (18) One has now reached the stage where the number of life peers who are dying more than matches the number of new creations; hence there is, at present, no significant annual increase in the total number of life peers. The number of active peers has remained roughly the same for several years.
- (19) The present number of evidence-taking sessions permissible in a Commons' SSC is three. I see no reason why a maximum of five sessions should not be introduced, leaving it to the discretion of the committee to decide how many sessions—up to that maximum—are appropriate.
- (20) See *Public Bill Procedure: Second Report from the Select Committee on Procedure*, HC 49, Session 1984–85; and *The Working of the Select Committee System: Second Report from the Select Committee on Procedure*, HC 19, Session 1989–90, paragraph 315.
- (21) Bruce George and Barbra Evans, "Parliamentary Reform—The Internal View", in D Judge (ed), *The Politics of Parliamentary Reform* (London: Heinemann Educational Books, 1983), pp 87–90.
- (22) During the SSC stage of the Mental Health Bill in the Commons, for example, some members went on an informal tour of Broadmoor. Fact-finding visits are already a well-established feature of select committees in both Houses. Thus, for example, in the context of the Lords, the Select Committee on Murder and Life Imprisonment made several visits to HM Prisons.

### Letter to the Chairman from Lord Ross of Newport

I believe your Committee is considering the suggestion that the relationships between Central and Local Government might merit the establishment of a new select committee in the House of Lords. I would like to support this view in the light of the need to improve the current situation, which is very unsatisfactory.

30 November 1991

### Letter from Sir Michael Atiyah KT, FRS, President of the Royal Society

Thank you for inviting the Society to submit evidence to your inquiry into the committee work of the House. As you suggest, our reply will focus on the Select Committee on Science and Technology.

The Committee was established in 1980, following a decision to close an analogous committee in the House of Commons. It has played an invaluable role in keeping science and technology on the national policy-making agenda and in providing a focus within Westminster for informed debate about S and T issues. The various phases of the Committee's procedures all contribute to this: the discussion in advance of identifying subjects for investigation, the process of conducting the investigation (including the efforts by many organisations and individuals in preparing written and/or oral evidence), publication of the report, subsequent debate in the House and the Government's formal response. The processes are as important as the formal end-product in bringing about changes in attitude and practice. In particular, the opportunity for individuals and organizations to make known their views to a non-partisan group in Parliament is, in itself, a valuable contribution to the broader process of public understanding of science.

At the formal level, a particular advantage of the Select Committee is the custom of an official Government response. Sometimes this response has been slow in coming. This can dissipate the momentum generated by the Committee. Commitment to more rapid response would be beneficial.

The Select Committee's choices of subjects have been apt. Many of the inquiries have been on issues of concern to the Society, and the Society has submitted both written and oral evidence. The balance of subject matter will no doubt continue to evolve in line with the development of policy priorities.

It is hard to judge the direct influence that a body like the Select Committee has had. But appearances can be deceptive: for example, although a number of the recommendations in the 1981 report *Science and Government* were not directly implemented, one innovation—the annual review of Government-funded R&D—has, over the years, developed into a most effective means of gaining a horizontal view of R and D activities across a strongly vertically-organised Whitehall, and has become the basis of a much stronger central forum for science in Government than had previously existed. On other occasions, major recommendations have been directly implemented. In all cases, the debate generated by both the process and the output of an inquiry has helped the relevant community, the Executive, the Opposition and Parliament to clarify their views.

The Select Committee inquiries generally take six months or more. Detailed investigations of this sort are valuable, allowing complex issues of long-term importance to be investigated with the care they deserve. There is also a case for quick-fire studies of the type carried out this year on the 1991/92 Science Budget. Provided there are sufficient resources to carry them out without undermining the programme of longer studies, we would encourage the Select Committee to consider mounting further short inquiries when the circumstances demand it.

I hope these comments are helpful.

18 July 1991

### Evidence by Dr Michael Rush, Head of the Department of Politics, University of Exeter

#### INTRODUCTION

1. Parliament has long been a focus of attention for pressure groups, but there is evidence that such attention has increased significantly in the post-war period generally and in the last twenty or so years in particular, the publication in 1990 of *Parliament and Pressure Politics*<sup>1</sup> by members of The Study of Parliament Group<sup>2</sup> provided detailed evidence of the levels and nature of pressure group activity in Parliament. The study included a survey of 253 pressure groups or organisations outside Parliament and government, only 4.3 per cent of whom said they had had no contact with Parliament.<sup>3</sup>



2. The general picture that emerged from the study is that most pressure groups are well aware that the key actors in the making of policy decisions are ministers and senior civil servants, who were placed first or second by 60.1 per cent of respondents in answer to a question on influence on public policy; Parliament came a poor fourth. Nonetheless, groups value Parliament as a forum for expressing their views, especially as a means of influencing the details of policy, which are often their concern.

#### THE HOUSE OF LORDS AND PRESSURE POLITICS

##### 3. *Pressure group contacts with Parliament*

<i>Type of contact</i>	<i>%</i>	<i>n</i>
Regular or frequent contact with MPs	74.7	189
Presented written evidence to a select committee	65.6	166
Regular or frequent contact with peers	58.7	148*
Presented oral evidence to a select committee	49.0	124
Contacts with all-party groups	47.6	120*
Contacts with party subject groups or committees	40.9	103*

Source: *Parliament and Pressure Politics* p 14.

Note: \*—1 respondent did not answer.

It is abundantly clear from the Table that, not only are pressure group contacts with Parliament extensive, but that contacts with the House of Lords in particular figure prominently in the activities of many groups. These contacts take a number of forms, such as asking individual peers to put down a parliamentary Question, table a motion or an amendment to a bill, speak in a debate, sponsor a Private Member's bill, arrange a meeting at the House for the organisation, or arrange a meeting with a minister, but it also includes presenting evidence to select committees.

4. Although most pressure groups also know that politically the House of Commons is much more important than the House of Lords, this does not prevent them paying a good deal of attention to the upper house and its members. This is hardly surprising given, on the one hand, the frequent concern of groups with the details of policy and, on the other, the opportunities that the House of Lords provides for influencing such details. Thus in response to another question a quarter (23.6 per cent) of the organisations surveyed thought the House of Lords was more useful than the Commons "in seeking to make representations or to influence policy" and nearly a half (47.7 per cent) though the two Houses were about equal in this respect. Moreover, as many as 81.8 per cent found their contacts with the upper house "very useful" or "useful".<sup>4</sup>

#### HOUSE OF LORDS SELECT COMMITTEE AND PRESSURE POLITICS

5. Although no specific questions were asked about House of Lords select committees, respondents were asked to mention particular committees to whom their organisations had submitted oral or written evidence. Lords committees were mentioned twenty-two times—a fairly high rate, bearing in mind the small number of select committees in the upper house. The committee most frequently mentioned was the Select Committee on the European Communities, which was cited by eleven respondents, followed by the Science and Technology Committee, cited five times.

6. From additional comments made by pressure groups in response to questions on the value of select committees in both Houses and in separate correspondence, it is clear that Lords committees are highly valued, as two typical comments illustrate:

We have a high opinion of Lords committee work, particularly because it is less pressured and bound by party entrenched positions than those in the Commons. We have submitted evidence, written and oral, to many Lords committees, including the one on hazardous wastes and those that scrutinise EEC proposed legislation. Our views have been solicited and often included in recommendations.

We have come to regard the Lords Select Committee on the European Communities as a particularly useful forum, especially as its views are highly regarded by the European Commission.<sup>5</sup>

#### CONCLUSION

7. From the point of view of pressure groups it is somewhat misleading to isolate select committee inquiries from other procedures, since outside organisations see them as one of a number of avenues for getting their points of view across. In some circumstances parliamentary Questions, debates, motions, amendments to bills, select committee inquiries and so on are alternatives, but in other they are complementary, especially over time: in short, groups will consider and often take any opportunity to present their views. That being so, many groups would not be averse to a considerable widening or extension of select committee activity in the House of Lords. Certainly, the expansion of select committee activity in the House of Commons, particularly with the establishment of the departmental select committees, has not only widened opportunities for pressure

groups but resulted in a considerable increase in the amount of evidence submitted by groups to Commons select committees, both proportionately and absolutely. The proportion of evidence from pressure groups in 1957–58 was 24·5 per cent, compared with 43·5 per cent in 1985–86;<sup>6</sup> and the sheer increase in select committee activity produced much more evidence from pressure groups.

8. It does not follow, however, that the House of Lords should emulate the House of Commons, either by increasing massively its use of select committees generally or by setting up a parallel range of departmental committees. While parallel committees would doubtless conduct many different inquiries from their commons counterparts, there would inevitably be a degree of duplication, if only over time, such as the duration of a Parliament. Some duplication already occurs with departmental committee inquiries into policy matters that cross departmental boundaries and between departmental committees and the Public Accounts Committee. In any case, it is doubtful whether the House of Lords has sufficient regular attenders among its members to sustain such an expansion.

9. The House of Lords should therefore build on the success of its existing committees—both permanent and *ad hoc*. The Science and Technology Committee was consciously set up in response to the disappearance of its Commons counterpart on the creation of the departmental committees.<sup>7</sup> It is widely regarded as a successful committee, as is the House's other sessional committee—that on the European Communities.<sup>8</sup> Indeed, the European Communities Committee is likely to become increasingly important as European integration develops. *Ad hoc* committees in recent years have also been used successfully, though in limited numbers.

10. Any recommendation to expand select committee activity in the House of Lords should rest on a realistic assessment of the number of committees and level of activity that the House can sustain, especially in terms of active members. The House should resist a duplication or semi-duplication of Commons committees, which would do less to enhance Parliament's ability to scrutinise the executive than a modest expansion of existing practice. The House should therefore continue and develop what it has demonstrated it does well in using select committees:

- (a) maintain the two existing sessional committees on Science and Technology and on the European Communities;
- (b) consider establishing one (or possibly two) additional sessional committees in *subject* areas in which sufficient members of the House have expertise and interest;
- (c) continue the practice of using *ad hoc* committees in particular subject areas, especially those of public concern and/or which are likely to be economically or environmentally important.

12 November 1991

#### NOTES

(<sup>1</sup>) Michael Rush(ed), *Parliament and Pressure Politics*, Oxford University Press, 1990. In particular, see Nicholas Baldwin, "The House of Lords".

(<sup>2</sup>) The Study of Parliament Group consists of academics and officers of the two Houses of Parliament who have undertaken research on Parliament. However, the views expressed in this memorandum are entirely those of the author and not those of the Study of Parliament Group collectively, nor of the contributors to *Parliament and Pressure Politics*.

(<sup>3</sup>) The survey was conducted in the summer of 1986 and the response rate was 73·1 per cent.

(<sup>4</sup>) *Parliament and Pressure Politics*, p 164, Tables 7.7 and 7.8.

(<sup>5</sup>) *Ibid*, p 166.

(<sup>6</sup>) *Ibid*, p 143

(<sup>7</sup>) *Second Report of the House of Lords Select Committee on Procedure*, HL 97, 1979–80, p 1.

(<sup>8</sup>) See T St J N Bates, "Select Committees in the House of Lords" in Gavin Drewry (ed), *The New Select Committees: A Study of the 1979 Reforms*, Oxford University Press, 1985, 2nd ed, 1989, pp 49–52.

#### Letter from Sir Mark Richmond, ScD FRS, Chairman of the Science and Engineering Research Council

##### SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE

Thank you very much for inviting SERC to submit written evidence to the Select Committee. The SERC has been consulted on a number of issues by the Science and Technology Committee and its Sub-committees. Our General view is that the Committee has performed a valuable role in identifying sensitive matters worthy of investigation and bringing them into the public arena. The Committee consults widely in its work and its reports are consequently well informed and well argued although they do not always carry the same weight as a report from a House of Commons Select Committee might. The SERC is thus in favour of retaining the present Committee structure and way of working.

24 June 1991



**Letter from Professor Keith Pavitt, Deputy Director, Science Policy Research Unit,  
University of Sussex**

Thank you for your letter of 12 June, in which you asked my views on the work of the Science and Technology Committee. These are as follows:—

1. As a public knowledge Research Institute concerned with science and technology policy, we find that the Committee has been an invaluable channel, both to feed the results of our work into policy processes and to identify the problems and constraints faced by practitioners.
2. From my position as a specialist adviser, I was impressed by the sophistication and incisiveness amongst the Committee's members. In my view, the complexity of the subject matter is well served by their competence, experience and detachment.
3. As with our own research work, it is difficult to assess the impact of the Committee on policy. My guess is that civil servants will be tempted to under-estimate the importance of what are likely to be shifts in perception in the long term, rather than dramatic changes in the short term.
4. One problem could be the heavy load placed on support staff, including specialist advisers. One possibility would be the establishment of a research and consultancy budget, but I have not thought through the implications.

I hope that this helps. Please do not hesitate to write again if you think I can be of any further assistance.

18 June 1991

**Submission by the Scottish Law Commission**

This Commission has recently had drawn to its attention the current review of the Committee work of the House which is being carried out by the Committee. This Commission is keenly interested in the review which may have implications for the implementation of Law Commission reports.

In recent years there has been an increase in the number of this Commission's reports which have not been considered by Parliament with a view to implementation. This is a matter which has been mentioned in this Commission's recent Annual Reports which have been published and laid before Parliament. Commissioners are grateful, therefore, to the Committee for including in their review discussion of possible means whereby Parliamentary consideration of law reform proposals emanating from the Law Commissions can be expedited.

Commissioners have also had drawn to their attention the matters which were discussed at the meeting between the Chairman of the Committee and the Lord Chancellor which was held on 5 December 1991. In general Commissioners respectfully agree with the observations made by the Lord Chancellor, but would submit the following comments upon these observations:

1. Although the Commission would like to learn more about the scrutiny of bills procedure of the Australian Senate, at present Commissioners incline to agree with the Lord Chancellor's preference for a small special standing committee having a membership which would vary from Bill to Bill. As the Committee will be aware, most of the draft Bills prepared by this Commission relate only to Scotland and, in view of the paramount Scottish interest in these Bills, it would in our submission be essential for the composition of the special standing committee when considering such Bills to be mainly Scottish.
2. Most of the reports submitted by this Commission are influenced by written responses made by various Scottish individuals and bodies to our discussion papers. The great majority of our consultees do not insist upon confidentiality for their comments. It may therefore be worth considering whether the time spent by the special standing committee in hearing evidence could usefully be cut down by making available to it the Commission's written consultation.
3. Many of the Commissions' consultees are individuals residing in Scotland. For some of them it might be a hardship were the Committee to take evidence exclusively in London when considering a Scottish measure. If therefore the special standing committee considered it necessary to hear oral evidence in relation to a Scottish Bill, it is suggested that the sitting should take place in Scotland.
4. This Commission has some reservations about the possibility of Commissioners or staff members giving oral evidence before the special standing committee. In the first place, because of changes in personnel there may be practical difficulties in securing a Commissioner or staff member having sufficient mastery of the detail if a long period has elapsed since between the preparation of the report and the committee hearing. Further, if one purpose of taking oral evidence from members of the Commission is to debate the merits of any particular proposal, there is a risk that consultation carried out by the Commissions may be devalued, and that the present detachment and independence of the Commissions may be compromised.

5. There is an obvious difficulty in determining what law reform measures would be appropriate for consideration by a special standing committee. If they were to be restricted to “technical law reform measures”, then very few recommendations made by this Commission would qualify. This Commission would therefore favour extending the range of the special standing committee’s scrutiny to law reform measures which, albeit contentious, are not likely to lead to division on a purely party political basis.

The Hon Lord Davidson, Chairman  
8 January 1992

**Submission by Mr Donald Shell, Department of Politics,  
University of Bristol**

**BACKGROUND: PREVIOUS PROPOSALS AND COMMITTEE DEVELOPMENT**

1. In comparison with parliamentary chambers elsewhere in the world the House of Lords makes comparatively little use of committees. The reasons for this are various, but probably include the unpaid and part-time character of the membership of the House, and the attitude adopted by successive governments to committees within both Houses of the British Parliament.

2. The 1968 White Paper *House of Lords Reform* (Cmnd. 3799) included some suggestions put forward by the Government (in Appendix II) for the development of committees. These were predicated on the assumption that the reforms proposed in the White Paper would be carried into effect. In the main the suggestions involved the development of joint select committees. The only such committee to have been established since then has been the Joint Select Committee on Statutory Instruments.

3. However the House has itself taken the initiative in setting up the European Communities Committee (1974) and the Science and Technology Committee (1980). Both these have enabled the expertise of the House to be deployed in ways that are complementary to the House of Commons rather than rivalling the work of the lower House. Both have gained high reputations for their work.

4. The House has also established a succession of select committees on bills (almost all private Members’ bills) over the last twenty years, and these have produced reports which have not only been valuable for their elucidation of complex topics, but also for the way they have shown how legislation may be framed to achieve certain objectives, or alternatively why legislation is undesirable. Select Committees on subjects have in certain limited areas deepened the work of the House in scrutinising public policy.

5. Committee development has been least in regard to government bills. The occasional use of Public Bill Committees has not generally been seen as a success (see comments in *Report by the Group on the Working of the House*, paragraphs 24–28, 9, 1987–88). Any saving of time has been minimal, nor is it apparent that the quality of legislative scrutiny has been improved to a degree which might be said to justify the cumbersome procedures involved.

6. The recommendations made by the *Select Committee on Practice and Procedure of the House* in 1977 (HL 141, 1976–77) for a radical development of a new committee system for the scrutiny of legislation met with a decidedly unenthusiastic response, particularly from the front benches, when debated in the House (5 July, 1977; especially Lord Carrington’s speech). The Government has shown no enthusiasm for the introduction of select committee type proceedings on government bills in either House. The attitude of the Government to Special Standing Committees in the Commons exemplifies this. Opposition to such reform of the legislative process appears to be based on an anxiety that some loss of executive control over legislation would result, certainly in terms of the timetabling of bills, and perhaps also in terms of their content as amended by Parliament.

**MAJOR REASONS FOR CONSIDERING COMMITTEES FOR LEGISLATION**

7. Nevertheless the House should now give serious consideration to the need to develop a committee structure to deal with legislation. There are two basic reasons for this. The first is the increased time taken within the chamber by legislative debate. The second is the need for more effective scrutiny of draft legislation than at present takes place. These factors are undoubtedly related. Concern about both has been aggravated by the increased quantity of legislation introduced by successive Governments and the allegedly poorer quality of legislation on its first introduction to Parliament. (See for example the debates initiated by Lord Simon of Glaisdale on 31 January, 1990, cols 382–407, and by Lord Rippon of Hexham on 14 February, 1990, cols 1407–37.)



## GROWING DEMANDS ON THE TIME OF THE HOUSE

8. The extent to which time pressures on the House have grown deserves emphasis. As far as the floor of the House is concerned the time spent on government bills has sharply increased in recent sessions. It is worth noting that if the whole period since the early 1970s is examined the increased demand for time spent on legislation has been met through the House sitting for longer hours. However by the mid-1980s it was probably unreasonable to expect the House further to increase its sitting hours, given the unpaid and voluntary character of its membership. Hence the need to give more time to the consideration of bills had to be at the expense of non-legislative debate. Hence since the mid-1980s a definite reduction in the hours spent on non-legislative debate has occurred as the total number of hours the House sits has levelled off. (See Table.)

Time spent on legislative and deliberative work 1974–90

	Average percentage of time per session		Average number of hours per session	
	Legislation	Deliberation	Legislation	Deliberation
1974–78	53.4	43.2	444	336
1979–82	57.9	37.5	598	393
1983–86	58.7	37.1	690	435
1987–90	64.6	30.2	757	353

Notes: This table excludes the final session of each parliament. In all the above parliaments the final session was foreshortened because of early dissolution. This distorts the pattern of business in the Lords where work on legislation is always heavier later in the session. Excluding the final session also facilitates comparison with the 1987–90 period.

“Legislation” includes all debates on bills and affirmative instruments.

“Deliberation” includes all proceedings on questions, motions and statements.

Sources: Calculated from figures supplied by the House of Lords Information Office.

9. It may be that the relative decline in time spent on non-legislative debate on the floor of the House has been regarded as tolerable because most of the increased time spent by peers in select committees has been devoted to what is essentially non-legislative business. But an examination of the select committee work of the House suggests that the House has already developed its activities to the point at which it is in danger of over-extending itself. The number of peers involved in the work of the European Communities’ Committee has fallen in recent years, and an examination of the attendance of peers at EC sub-committee meetings in the 1988–89 session indicates an overall attendance rate of just over 57 per cent (a figure significantly lower than the average attendance rate for all Departmental select committees in the House of Commons). This strongly suggests that any further extension in the total range of committee work by the House (as at present composed) may be difficult to support unless it is accompanied by a reduction in the time spent on the floor of the House.

## PROPOSALS FOR LEGISLATIVE COMMITTEES

10. A change in the culture of the House which permitted a shift in the focus of legislative scrutiny from the floor of the chamber to committee rooms is now necessary. It is hard to see the House being able to improve the quality of its legislative work within the present constraints on the legislative process unless such a shift does occur. A start could be made by introducing a procedure which would allow the House to establish committees analogous to Commons Special Standing Committees to deal with selected Lords’ bills. Such a change would be aimed primarily at improving the quality of scrutiny, but could also result in a diminution of time spent dealing with legislation on the floor of the House. One model would be to establish a committee at the time a bill is given its second reading, which would then take evidence and cross-examine witnesses, producing a report prior to the usual committee stage of the bill. Such a committee might call the minister in charge of the bill and his senior advisers as its first witnesses. This should diminish the need for “probing” amendments at a later stage. Other witnesses could be invited to give evidence and this would stimulate interested parties outside Parliament to place on record their views about the provisions of a bill at an early stage in its parliamentary passage. This process should help to clarify the minds of those involved and hopefully thereby reduce the need for large numbers of amendments (sometimes virtually rewriting a bill) being introduced at a much later stage. Special Standing Committees in the Commons have been allowed a month in which to do their investigative work. It is worth noting that experience with Special Standing Committees in the Commons was viewed very favourably by almost all those who took part (see the Second Report of the Select Committee on Procedure, HC 49, 1984–85).

11. It would be very difficult to see such a procedure being used in the House of Lords to consider Commons bills, given the usual pressure of time the House is under in considering such bills. This points to the need for a more radical kind of reform. One possibility would be to allow a committee to commence its work while a bill was still before the Commons. Given that the legislative work of the House of Lords is conceived of primarily as revision, then it seems reasonable that the House should take steps to inform itself in a thorough and systematic way about the progress of a bill in the Commons. For a Commons' bill therefore the primary focus of the work of such a committee could be an analysis of the proceedings on the bill in the lower House. As suggested by the 1977 Select Committee on Practice and Procedure this could include the identification of undertakings given, and of clauses not debated in detail because of the use of the "guillotine". But it may also be helpful if such a committee had the power to take evidence from individuals and organisations outside Parliament about provisions in the bill, and to commence such work while a bill was still before the Commons.

12. A further development would be to enable committees which have operated as select committees dealing with bills to be charged with the task of monitoring and perhaps taking further evidence on their implementation. This could include giving attention to the way policy was carried forward in the formulation of statutory instruments, giving a scrutiny to SIs wider than that at present undertaken by the joint select committee.

13. I would suggest that a start be made by establishing a committee to operate in a way analogous to a Commons Special Standing Committee to examine a Lords' bill. This would be in the nature of an experiment. A more systematic structure of committees could follow. The main objective of such a development would be to facilitate the improved scrutiny of legislation. If no significant reduction in the time spent dealing with legislation on the floor of the House took place, there would no doubt be serious problems in securing active membership for such committees. This could be taken as pointing to the need for more fundamental reform of the House.

#### SESSIONAL CARRY-OVER

14. A limited facility to allow the carry-over of bills from one session to another could enhance the capacity of the House to use the sort of procedure here described. Any proposal to this effect would require acceptance by the House of Commons and thus by the Government. But it would be desirable to emphasise the advantage of a carry-over facility. This could require the Government to identify certain bills in each session which could be carried over to complete their passage in the following session.

#### A PROPOSAL FOR A MINOR CHANGE

15. By contrast one final suggestion would be within the power of the House, namely for it to adopt the Commons practice of publishing a sessional return covering all its committees, including information about the attendance of members at all committee meetings. At present such information is only available in the minutes of committee proceedings in the Record Office.

*November 1991*

#### **Letter from Mr Adrian Slade, the Archbishop of Canterbury's Acting Secretary for Public Affairs**

You wrote on 30 July asking for the views of the Archbishops and the Bishops on the Committee structure in the House of Lords.

I have now had the opportunity to talk to the Archbishop of Canterbury and one or two of the other Bishops, and the general view seems to be that, while the Bishops might participate more in Committee proceedings, time is nearly always their enemy. For example, the Bishop of St Albans referred to a Select Committee to which he was appointed and upon which he sat for at least three months. He said that it took up almost every spare moment of his time and he was for ever juggling his diocesan duties in order to get to Westminster for a morning or afternoon meeting. Then came the prorogation of Parliament and a General Election so the Committee lapsed and when it was restarted he begged to be excused on the ground that he was due for a three-month sabbatical and the Bishop of Gloucester took his place.

I think this illustrates the very great difficulties that the Bishops, who have full-time work in their dioceses to do, face in participating fully in the work of the House of Lords. Their willingness is not in doubt but one suggestion they do make is that perhaps Select Committees should meet less frequently, eg on a monthly or fortnightly basis. The alternative would be for them to meet on the same day, morning or afternoon, every week which would enable the Bishop to plan his diary accordingly.



No views were expressed on the need for additional Committees. Rather it was pointed out that there would be relatively few occasions when it would be necessary or appropriate for a Bishop to be involved. They all share the view that public bills should continue to be discussed on the floor of the House.

I hope this is helpful to your Committee in its considerations. You have already heard from the Bishop of Manchester and letters I have received from other Bishops echo his views.

23 September 1991

**Letter from Mr David Lea, OBE, Assistant General Secretary, Trades Union Congress**

**SELECT COMMITTEE ON THE COMMITTEE WORK OF THE HOUSE**

Thank you for your letter dated 10 June inviting the TUC's views on the Work of the European Communities Committee. I am sorry for the delay in replying.

Our main comment is that if the principle of "subsidiarity" is to mean anything in practice, including after the revision of the Treaties, it will require examination of how framework laws, or even, in the social field, eventually framework agreements are implemented in the member states. The Treaties accord a role to national laws and practices including collective agreements.

In our view it would be useful for the Committee to devote more attention to the rules governing primary legislation in Westminster or other measures as means of giving effect to EC frameworks.

It seems to us that such a study could have a major impact and would avoid the tendency to "miss the boat" which often happens with the existing procedure; we also have the impression—right or wrong—of there being rather haphazard criteria for selecting issues, notwithstanding the generally excellent quality of the reports, which are the best of their kind produced in any national legislature.

I hope that these observations, albeit brief, are helpful to your enquiry.

5 July 1991

**Letter to the Chairman from Lord Underhill, CBE**

As you may know, I am President of the Association of Metropolitan Authorities.

I understand that the Association has recently submitted a memorandum of evidence to your Select Committee suggesting the establishment of a new Select Committee of the House to deal with central/local relations. I wanted to let you know that this proposal has my full support. I consider that such a Select Committee would be able to make a useful and substantial contribution to understanding in Parliament and more widely of the trend in relations between central and local government.

I further understand that this particular point was put forward by Lord Cledwyn when he appeared in front of the Select Committee recently. I know that the proposal is one which would have very wide support in local government circles and amongst academic observers in this field.

I hope very much that it may be possible for the Committee's Report to reflect favourably on this proposal, and that it may be possible for you to recommend that the proposal be taken further. I look forward with very great interest to reading your Report when it is published.

27 November 1991

**Letter from Dr Helen Wallace, Director, West European Programme, Royal Institute of International Affairs**

As you know, I think the Committee has a remarkable record in producing thorough and well argued reports, which are informative and illuminating. I welcome the way in which the Committee moves between broad-ranging enquiries and specific, highly focused topics. This range is one of the Committee's strengths and highly relevant to the interest which its reports continue to attract. If one of the issues under consideration is whether the range and volume of work should be reduced I would be sorry. No other parliamentary chamber in the EC does anything comparable.

On the questions of national parliamentary scrutiny and in spite of the flurry of attention it has attracted, I am doubtful that there is so much mileage in the case for extended scrutiny. There are structural reasons for the relative lack of impact of national scrutiny (in the narrow sense) on EC legislation and I doubt that this will change.

I would make two different points. First I think the issue of how regional levels of parliament and government impact on the Community is of increasing salience. Second, however much the European Parliament develops its powers, I believe that there is a wider point about democratic legitimacy and accessibility of the EC law-making process for individual EC citizens. Neither conventional national parliaments nor the EC really provide a means of addressing this question, since they deal in such broad aggregates of (mostly) party political opinion. I think we are all going to have to take this issue on board and mull it over.

One final thought, if the IGCs create some pillars, which do not depend on generating legislation, the Lords' Committee will have to tussle with the issue of how to deal with the range from internal order and security issues (co-ordinated outside the strict EC arena) to the security range. Intergovernmental processes are much harder to get at for scrutiny, as the Dutch have found in their efforts to get a handle on the Schengen process. Eileen Denza knows all about that.

12 August 1991

**Letter from Mr Andrew Warren, Director of the Association for the Conservation of Energy**

Thank you for your letter of 21 June. I am pleased to have an opportunity to provide the Select Committee with my views, upon the work of the European Communities Committee, and the Select Committee on Science and Technology, as well as various *ad hoc* select committees.

Obviously the main objective should be for the two Houses of Parliament to run a committee structure on a complementary, rather than a competitive, basis.

Ever since 1979 the Lower House has increasingly concentrated (apart from standing committee work), upon select committees to monitor the individual departments activities and expenditure. More recently they have also formed specific sub-committees to deal with different items of proposed EC legislation.

This arrangement does leave some potentially extremely disturbing gaps in the ways in which the legislature oversees the executive, based both here and in Brussels. The European Communities Committee has for some time rightly opted to consider the details of larger programmes—in my own area, like SAVE and THERMIE—on occasion being prepared to consider in greater detail certain proposed directives forming part of such programmes.

In the Lower House, there is little opportunity to consider the wider thrust of Community policy, but I am concerned that this may also be the position *mutatis mutandis* in which the Upper House can also be placed by default. For instance, there is likely to be an extremely intense debate about the implications of the introduction of a new energy/carbon tax. Were this to become Commission policy, it would be likely to be some while before any specific item of legislation was placed before Parliament: indeed, the chances are that the main overt manifestation would be in the form of a Communication to the European Council. This is precisely the kind of policy issue which until now might well have been difficult to place in a British parliamentary context, until effectively the main decisions had been taken—thus rendering any eventual committee recommendations of academic interest alone.

I would therefore recommend that on appropriate occasions consideration be given to investigating broader European Community topics, in advance of specific legislative initiatives.

On a wider basis, it is a constant concern of those involved with policy analysis in the United Kingdom that there is a distinct failure to connect between different departments of state concerning the implications of their policies. All too often, unwittingly, different policies may pull in diametrically different directions. Unless there is a specific legislative initiative pending which enables such overall considerations to be made (and not always then!), it is really not possible for any departmentally based select committee to consider the full ramifications of policy.



The place where this can best be handled within the legislature is, I would submit, their Lordships House. From my (admittedly limited) experience, I am convinced that one of the most important roles that the committee structure in the Upper House can play is to undertake enquiries into issues which transcend departmental boundaries. For instance, one department of state may be seeking to increase the turnover of industries over which they have ostensible jurisdiction, whilst another may be seeking to alter the orientation of such industries, in order to reduce the impact of the pollution they cause.

Such failures-to-connect are all too prevalent in any departmentally based system of government. It would be compounding the error were those charged with overseeing the efficiency of the executive to seek only to mirror such arrangements. That is a charge which can legitimately be made at the Commons Select Committee structure. It is one which the Lords has managed to avoid to date, and which provides the best reason for continuing with a series of *ad hoc* committees which have the flexibility to consider issues which transcend traditional boundaries.

18 July 1991

**Memorandum by Professor Roger Williams, Faculty of Economic and Social Studies,  
University of Manchester**

I have acted as a Specialist Adviser to six inquiries by the Select Committee on Science and Technology (SCST) and one by the Select Committee on the European Communities. I was also in 1974–5 a Science Adviser with the Science Council of Canada, and during two extended periods in Washington much of my time was concerned with the functioning of Congressional Committees. I also have the more general interest in legislatures to be expected of a professor in a university department of government. Though I have from time to time been invited to assist Committees of the House of Commons, invitations have always come when I was already over-extended and I therefore have no direct experience in that context. My service with the Select Committee on Science and Technology could fairly be construed as evidence of a belief in the value of that Committee's work, but in the following observations I have tried to be as objective as possible. I begin from the premise that informed and independent inquiry by committees of the legislature can enhance the democratic process.

1. It implies no criticism of past SCST inquiries to suggest that it may be worth investing more effort in the preliminary process through which subjects for inquiry are arrived at. I would certainly not wish to suggest any mechanistic appraisal system but questions of the following kind might be considered fairly formally at the outset:

- Has this subject been tackled previously by a committee of Parliament?
- What could the Committee hope to achieve if it conducted a successful inquiry?
- Is the subject of long-standing interest or has some crisis arisen in respect of it?
- How appropriate is the topic for the Committee's normal modes of inquiry?
- Is the subject naturally, or can it be made, of wide public interest?
- What international developments are relevant?
- Can the Committee find a vantage point which will give it some advantage over the government department responsible for the subject?
- Is there a case for a brief interim report instead of (or as well as) a full inquiry?
- How would a particular inquiry contribute to the balance of the Committee's portfolio over time (eg science as compared with technology, broad as compared with narrow focus, politically uncontroversial as compared with politically sensitive, etc)?

2. I feel I should emphasise the importance of committee expertise. There are many reasons for the influence of US Congressional Committees, most of them beyond the reach of committees of the United Kingdom Parliament. But one aspect of US Congressional Committee work is certainly relevant in British circumstances. This is the sense in which committee wisdom builds up over the years. Several things contribute to this. They include:

- continuity of committee membership and staff
- a willingness to return to issues previously the subject of inquiry
- good intelligence about forthcoming developments both within and outside government
- resonance with wider public events
- a distinctive committee style.

3. Committees of the House of Lords will always be relatively poorly resourced. Even so, I believe there is considerable advantage in having in many cases two specialist advisers, and also in retaining a specialist assistant. Having two specialist advisers both ensures better overall coverage and can also mean that each in a sense provides encouragement to the other. A properly qualified specialist assistant provides a capacity which cannot in general reasonably be looked for from specialist advisers.

4. It is certainly worth putting effort into the questions sent in advance to oral witnesses. And it is also worth ensuring that all such questions are subsequently put by one or other of the committee members. But there is also virtue in spontaneity, in the following up of a point which emerges in evidence but which had not been foreseen.

5. The Committee's role *vis-à-vis* its witnesses and the communities from which they come should not be underestimated. On at least two occasions it was clear to me that the fact of the Committee's interest alone was an important source of satisfaction to these communities. The first of these occasions was when the SCST took evidence at Manchester Airport from small companies in the north of England, and the second occasion was the recent report on the Science Budget when the science community at large felt that an authoritative body was at least paying serious attention to their worries. But there have been many other instances too when witnesses have genuinely welcomed the Committee's involvement. It is easy to see that there could be many reasons for this. In some cases witnesses will see advantage in getting the position of the body they represent on the public record. Sometimes it is a matter of replying to a position taken by government or other interested party. Many witnesses, naturally enough, are somewhat defensive, but there also those who look to the Committee to catalyse the emergence of a genuinely new solution to a policy difficulty.

6. It is a great strength of SCST reports that they are squarely based on the evidence received. In writing recommendations, however, there is still a delicate task to perform in expressing the Committee's considered opinion in the way best calculated to move government policy or the behaviour of interested parties in the direction the Committee would wish. A great deal has been written in recent years about giving advice of the sort the Committee does in its recommendations. A point frequently made is that advice tends to be most influential when injected into a finely balanced situation. In other words, the context in which the advice will be received should bear heavily upon the way in which it is formulated. On the other hand, there are times when advice must be tendered in full knowledge that it is unlikely soon to be acted upon, the aim then being to shape the climate of opinion over a longer period, perhaps putting down a marker against the greater wisdom of a future day.

7. The impact of any recommendations for action which committees make depends directly on the feasibility and timeliness of those recommendations. Feasibility in turn requires that those making recommendations appreciate fully the financial and institutional implications involved. Pursuit to timeliness all too often entails the shooting by government of any foxes driven from cover. This should really be regarded as a compliment to the Committee, though it is often felt to detract somewhat from the formal publication of a committee's report.

8. I felt before my first inquiry with the Select Committee on Science and Technology that reports from this Committee, taken together with the oral and written evidence received, could stand fair comparison with the output of a body such as the US Office of Technology Assessment, except that OTA reports of course cost a great deal more to produce. Most SCST reports become significant reference points in ensuing discussion of the topics they address. In some cases, particularly on institutional questions, the government has responded to committee reports with specific policy amendments. Government generally finds such changes easier to accommodate than policy departures involving increased expenditure.

9. It seemed to me from my one experience as adviser to the European Communities Committee that the relationship between that Committee and the SCST worked very well. The three members of the SCST who joined the European Communities Committee were able to bring the particular perspective of the SCST to bear on the matter of the Framework Programme which the European Communities Committee was then examining. In addition to this, it seems to me that the SCST performs a valuable function when it looks in its own right at the European dimension of policy. In many areas of science and technology this dimension can be expected to be of growing importance. The Committee receives evidence from United Kingdom science councillors and this and its own visits both to particular capitals and to organisations like the EEC and OECD, allow it to formulate its own distinctive approach. An increasing number of issues in the science and technology field do need to be seen in international context if they are to be fully understood and I believe there will be advantage in the strengthening of the SCSTs interest and confidence in formulating an international approach to policy.

10. I would welcome still more attention being given to SCST reports. I have no expertise in public relations but have given some thought as to how an enhanced response might be stimulated. Among the possibilities are:

- giving more attention to the actual timing of the appearance of reports
- in some cases providing executive summaries which appeal beyond the usual constituency of science journalists



- deliberately cultivating TV current affairs programmes
- accompanying reports with articles in newspapers or in outlets such as the *New Scientist*
- occasionally convening a “seminar” or “forum” to publicise and discuss a particular report.

I must confess that I am not entirely comfortable with the traditional press conference. It can easily become a rather low-key or stilted outlet. It is perfectly understandable that press conferences, like inquiries, normally take place in London but the possibility of a regional release and press conference should always be considered, perhaps related to the location of a particular facility. There is also the fact that committee reports are infrequently taken up in debate by Members of the House who are not also past or present members of the Committee. Although there are very understandable reasons for this it might prove worth specifically bringing to the attention of Members of the House who have not specialised in science and technology particular aspects of reports affecting subjects with which they normally identify. Perhaps this is already done?

The nature of the British political system means that issues of science will almost never occupy centre stage, and issues of technology only when they are directly related to some other more public concern such as employment or defence. This gives a committee of the legislature interested in science and technology both a special opportunity and a special responsibility. This is also an area where the composition of the House of Commons confers a substantial advantage on the House of Lords. I would judge that the achievements of the SCST during its first decade, as described by Paul Hayter in “The Parliamentary Monitoring of Science and Technology in Britain” which I persuaded him to write for *Government and Opposition* (Vol 26 No 2, Spring 1991) fully justify the existence of the Committee and the time which its members have given to it. Much more important, it is apparent that mine is a widely held view. And what Hayter’s article naturally cannot show is how barren the United Kingdom science and technology scene and debate would have been over the last decade in the absence of a committee of this sort. Governments of whatever political persuasion commonly find committees of the legislature something of a fifth wheel but, fortunately, democracy is about considerably more than the convenience of government.

18 July 1991

**Letter from the Chairman of the Science and Technology Committee  
to the Secretary of State for Education and Science**

**SELECT COMMITTEE ON COMMITTEE WORK OF THE HOUSE**

A number of Members of the House, including Lord Shackleton my predecessor as Chairman of the Science and Technology Committee, have drawn my attention to remarks which you made recently to the Select Committee on Committee Work about our report on United Kingdom Space Policy. They consider that you misrepresented their findings.

I was not a member of the Sub-Committee which conducted the original investigation and so I have looked at the minutes of evidence taken on 12 November and compared your remarks with the actual conclusions which the Select Committee reached on space policy in 1987.

In your evidence you say that “. . . the space report was in the hands of enthusiasts very much wanting us to go into a manned space programme, an extension of the European Space Agency projects” (Q 281) and that our study was embarked upon “solely to create the maximum furore about pulling out of HOTOL, Hermes and Ariane rockets” (Q 294). You subsequently agreed that on HOTOL, at least, the Committee and the Government were at one (Q 295).

In fact the Committee had concluded that “the United Kingdom should play no part in Hermes” (paragraph 5.55); their support for Ariane 5 was heavily qualified and set at the modest level of support already provided for Ariane 4 (paragraph 5.56); and their support for HOTOL was confined solely to elaborating the basic concept (paragraph 5.74). In my view these hardly amount to the conclusions of “enthusiasts”.

I realise that you were speaking off the cuff, but in the circumstances I feel bound to invite you to qualify your remarks. I understand that there are ways in which the record can be set straight and which your Private Secretary might explore with the Principal Clerk of Committees here, Michael Pownall.

Flowers

2 December 1991

**Letter from the Rt Hon Lord Shackleton, KG, FRS, to the Secretary of State for Education and Science**

Having seen Brian Flower's letter to you of 2 December concerning the position of the Select Committee's report on space, may I as Chairman of the Space Sub-Committee at the time quote a further paragraph which bears directly on your suggestion that "... the space report was in the hands of enthusiasts very much wanting us to go into a space programme ...". So far from doing so "... the Committee's view is that for the foreseeable future space could offer enough opportunity to telecontrolled craft to make the involvement of man an expensive as well as a hazardous diversion ... the Committee are opposed to putting Europeans into space independently of the Americans ... the United States and the Soviet Union are both committed to expanding the role of man in space. In those circumstances the Committee believe that Europe is right to support the American space station programme. If the Americans, for whatever reason, see advantages in delaying this programme, the United Kingdom should urge them to do so."

Shackleton

4 December 1991

**Letter from the Private Secretary to the Secretary of State for Education and Science to the Clerk****SELECT COMMITTEE ON COMMITTEE WORK OF THE HOUSE**

The Secretary of State gave evidence to the Select Committee on 12 November. He referred in his evidence to the Select Committee on Science and Technology 1987 Report on United Kingdom Space Policy (HL Paper 41-I).

As he himself pointed out in his answer to question 295 he was speaking off the cuff and from memory. He has now re-read the Report and the Government Response (HL Paper 105) and, in consequence, has authorised me to request that the following footnote (related to the words "I have not looked it up" on page 24 of the unrevised proof) should be added to the minutes:

"I have now gone back to the Select Committee's 1987 Report on United Kingdom Space Policy and the 1988 Government Response on which the Committee also commented. The Committee was in fact critical of the Government's decision on HOTOL. We also disagreed on the Ariane 5 development programme. I have no difficulty with the Committee taking a different view from that of the Government but my personal view remains that the Committee is part of the science lobby and on this occasion they wanted Ministers to "summon up more enthusiasm for space". Nevertheless, in giving evidence on 12 November 1991 my memory was at fault on one matter. The Select Committee on Science and Technology supported our decision on Hermes in 1987 and I am glad to acknowledge that."

Miss C M Bienkowska

Private Secretary

23 December 1991













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